

June 20, 1997

MEMORANDUM FOR BRUCE REED

FROM: MIKE COHEN
BILL KINCAID

SUBJECT: Education-Related Amendments to Juvenile Justice Bill

We thought we should give you a heads-up about some possible education-related amendments to the Juvenile Justice bill that could be considered next week.

I. Specter Amendment

Senator Specter has prepared an amendment which would, as one feature, create a broad new cross-agency waiver authority. At the request of a governor, this amendment would allow the AG, "in consultation with" the Secretaries of Labor, HHS and Education, to waive "or take other appropriate action" to permit the State to use funds under 18 federal programs for the purpose of juvenile job training, literacy training, remedial education, or substance abuse treatment as laid out in a state juvenile crime/juvenile justice action plan. Some of the more significant education programs covered include School-to-Work, Adult Education, Vocational Education, Even Start, Safe and Drug Free Schools and Vocational Rehabilitation. Two of the few major K-12 programs that aren't covered are the Title I program and Goals 2000.

Education sees major problems with Specter's proposed waiver authority, and we agree. Among other things: it provides literally no criteria or process for granting waivers; it provides essentially no limits on the scope of waivers; it appears to be unconnected to any performance or accountability requirements; and it would give the AG power over programs that other cabinet members are responsible for. Almost all of the education programs, and at least some of the others, are already subject to the responsible secretary's waiver authority. This has all of the weaknesses in Hatfield's Local Flex bill, and none of the redeeming features that some found attractive.

Specter asked Education and other agencies for their views on the amendment; late this week they provided "technical assistance," suggesting that the legislation instead direct the Secretaries to consider waivers under current law and grant them when appropriate. Not surprisingly, Specter's staff did not agree with this approach, but indicated they would go back and draft something more targeted. Biden's staff was present, too, and indicated Biden wanted to be as supportive as he could possibly be.

If it looks anything like the draft we have seen, the Administration should oppose this amendment, and avoid getting dragged into efforts to try to fix it.

II. Hatch Amendments

We hear that Hatch is considering offering three separate voucher amendments if he thinks that Democrats aren't being cooperative enough.

- The text of Title I-A of S. 1, which would authorize a new \$50 million program to fund vouchers for students to escape "unsafe schools."
- The text of Title I-B of S. 1, which would permit LEAs to give a voucher to a Title I student who is the victim of a "violent criminal offense."
- An amendment which would require states to have a voucher program as a condition of eligibility for the federal juvenile justice block grant funds.

The Administration has already taken a position against S. 1. As for the third voucher amendment, if anything, it is even more objectionable because it would essentially place an unfunded mandate on states to operate voucher programs.

III. Grassley Amendment

We hear that Grassley has prepared an amendment that would dramatically expand the gun-free schools law. The amendment would supposedly require expulsion for a long list of offenses include bringing drugs and drug paraphernalia to school, as well as regular use of alcohol or tobacco. We have few details on this, and haven't seen any language, but if the amendment is anything like what we have heard, it sounds as though it would go way beyond a reasonable extension of Gun-Free Schools.

cc: Elena Kagan
Jose Cerda

Juvenile Bill

FAX TRANSMISSION

U.S. DEPARTMENT OF EDUCATION
Office of Legislation and Congressional Affairs

600 INDEPENDENCE AVENUE, SW, ROOM 6337

WASHINGTON, DC 20202-3100

(202) 401-1028

FAX: (202) 401-1438

Date: 6/19/97

Fax #: 456-7028

Sent to: Bill Kincaid

Office: _____

From: Sandra Cook

Number of Pages (including cover sheet): 3

If there are any problems with this transmission, please contact me at: (202) 401-1028

COMMENTS: _____

JUN 19 1997

PENDING AMENDMENTS TO S. 10

Amendment #1, the "Student Opportunity and Safety Act"

Note: This amendment is also the text of Title 1-A of S. 1, the "Safe and Affordable Schools Act of 1997".

This proposal would authorize a new program, at \$50 million for FY 1998 and "such sums" for Fys 1999-2002, under which the Secretary would make grants to fund the provision of vouchers to be used by students to escape from "unsafe schools" and attend other public or private schools.

(1) Constitutionality of vouchers uncertain. The amendment would explicitly permit vouchers to be used at private sectarian schools (§§113(1), 116(a)(2)), which raises serious concerns under the Establishment Clause of the Constitution. (The Supreme Court may provide further guidance in this area in its second decision in the Felton case, expected by the end of the month.)

(2) Civil rights. The vouchers ("education certificates") authorized by the amendment would not be "Federal financial aid or assistance" to the schools at which they are used (§115(g)(1)). Thus, the Federal civil rights statutes (Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, §504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975) would not apply to those schools by virtue of those vouchers. (The amendment is silent about the applicability of those laws to the "eligible entities" to whom the Secretary would make grants that are used to award vouchers, so they would be covered.)

The amendment does require schools at which vouchers are used to comply with Title VI (§115(d), p. 13), but the Secretary would (apparently) have to enforce this requirement through the same mechanisms that generally apply to grant conditions, rather than through the specific enforcement mechanism in the Title VI statute and regulations.

(3) Uncertain IDEA requirements. Section 119(a)(2) (p. 22) says that "[n]othing in this subtitle shall be construed to affect the requirements of part B of the [IDEA]". However, the meaning of this deceptively simple statement is far from clear. If the point of the amendment is to give children a meaningful escape from the "unsafe school" they are attending (the voucher must be in an amount that gives the student the maximum degree of choice; it can cover the full cost of tuition, fees, and transportation; and the maximum voucher amount is the full amount of the per-pupil expenditure in the LEA), the IDEA language could be read to mean that children with disabilities who use a voucher to attend a private school are entitled to all the services they would receive if they had remained in the unsafe school, in the same way that §119(a)(1) requires that Title I services follow the

-2-

child to another school. Otherwise, children with disabilities are forced to choose between a free appropriate public education in an unsafe school and a different education in a safe school.

On the other hand, §612(a)(10)(A)(i)(I) of the newly revised IDEA makes very clear that an LEA's obligation to provide services to children with disabilities who choose to attend private schools is limited to a proportionate amount of Federal funds, which pay for only about 8 percent of the excess cost of educating these children. Neither the IDEA nor the proposed amendment to S. 10 provides an exception in the case of a publicly funded voucher program.

Amendment #2, voucher program as condition of eligibility for Juvenile Justice block grant

This proposal would require States that want to receive Juvenile Crime Control and Juvenile Offender Accountability Incentive Block Grants to establish school voucher programs similar to those described in amendment #1, but provides no funding mechanism to carry out those programs. Thus, States would have to fund these mandatory voucher programs from their own resources. The amendment does not say how extensive such a program must be to qualify.

In addition, the comments on Amendment #1 also apply to this amendment. See §5(a)(1) with respect to sectarian schools, §2(b) and (c) with respect to civil rights, and §4(a)(2) with respect to the IDEA.

Amendment #3, the "Common Sense School Safety Act"

Note: The text of this amendment is identical to Title I-B of S. 1.

This proposal would amend Part A of Title I of the ESEA to permit LEAs to use Title I funds to give a voucher to a Title I child (including any child attending a school in which a Title I schoolwide program is being carried out) who is the victim of a "violent criminal offense", a term to be defined by each State educational agency. The voucher could be in an amount up to the LEA's per-pupil expenditure (many times the per-child amount of Title I funds received by the LEA) and could be used to attend another school or to obtain Title I services.

The comments on Amendment #1 also apply to this amendment. See §1115B(a) and (b)(3) with respect to sectarian schools, §1115B(d), (h); and (i)(1) with respect to civil rights, and §1115B(j) with respect to the IDEA.

Juvenile Bill**FAX TRANSMISSION****U.S. DEPARTMENT OF EDUCATION****Office of Legislation and Congressional Affairs****600 INDEPENDENCE AVENUE, SW, ROOM 6337****WASHINGTON, DC 20202-3100****(202) 401-1028****FAX: (202) 401-1438**Date: 6/18/97Fax #: 456-7028Sent to: Bill Kincaid

Office: _____

From: Kay CasstevensNumber of Pages (including cover sheet): 13

If there are any problems with this transmission, please contact me at (202) 401-1028

COMMENTS: Info I promised._____

Author: Jack Kristy at WDCE04
Date: 6/16/97 12:11 PM
Priority: Normal
TO: Thomas Kelley at WDCB03
TO: Thomas Corwin at WDCT02
TO: Jack Kristy
Subject: Specter Amendment

----- Message Contents -----

Well, I don't know how this amendment fits into the rest of S.10 (since the page and line numbers don't seem to make sense), but we should be concerned by the proposed waiver authority starting on p.6, line 3. This provision would allow the AG, in consultation with the Secretary of Education, to waive apparently any provision of numerous Federal programs so as to make additional funds available for "juvenile job-training, literary [sic] training, remedial education, or substance abuse treatment." Our position over the last two years re the Hatfield mega-waiver proposal was that other agencies should not be waiving provisions of law that the Secretary is responsible to administer; if there is to be a waiver, it should be granted by the Secretary. I would also point out that the scope of the waiver authority is apparently limitless (e.g., no "fundamental purposes" limitation), that there are no "process" requirements (i.e., no application or required explanation why the waiver is needed), and no articulable standard by which the AG is to decide whether or not to grant the waiver. This amounts to discretionary authority for the AG, after a phone call to the Secretary, to commandeer ED appropriations for the purposes stated above. As a waiver authority it is dangerously broad, and should receive a lot of development work.

O:\KOR\KOR97.521

S.L.C.

AMENDMENT NO. _____

Calendar No. _____

Purpose: To make improvements to grant programs, and
for other purposes.

IN THE SENATE OF THE UNITED STATES—105th Cong., 1st Sess.

S. 10

To reduce violent juvenile crime, promote accountability by
juvenile criminals, punish and deter violent gang crime,
and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. SPECTER

Viz:

1 On page 7; line 9, strike "A juvenile" and insert the
2 following:

3 "(1) TREATMENT OF JUVENILES.—Subject to
4 paragraph (2), a juvenile".

5 On page 7, line 12, strike "(1) in the case of" and
6 insert the following:

7 "(A) in the case of".

O:\KOR\KOR97.521

S.L.C.

2

1 On page 7, lines 17 and 18, strike "which certifi-
2 cation shall not be subject to review in or by any court,".

3 On page 7, line 19, strike "(A) there is" and insert
4 the following:

5 "(i) there is".

6 On page 7, line 22, strike "(ii) the ends" and insert
7 the following:

8 "(ii) the ends".

9 On page 7, line 24, strike "(2) in all other" and in-
10 sert the following:

11 "(B) in all other".

12 On page 7, after line 24, add the following:

13 "(2) CERTAIN JUVENILES.—There shall be a
14 presumption that a juvenile who is 14 or 15 years
15 of age should not be tried as an adult under this
16 section, unless the court determines that special cir-
17 cumstances justify that action.

18 On page 8, strike lines 9 though 23 and insert the
19 following:

O:\KOR\KOR97.521

S.L.C.

3

1 if it is a Federal offense that is a homicide, an attempted
2 homicide, conspiracy to commit homicide, aggravated as-
3 sault, or aggravated rape (which constitutes rape commit-
4 ted with the use of a weapon or physical force).

5 On page 18, line 18, strike "prohibited physical con-
6 tact" and insert "any contact".

7 On page 71, line 20, strike "or".

8 On page 72, line 2, strike the period and insert ";
9 or".

10 On page 72, between lines 2 and 3, insert the follow-
11 ing:

12 "(L) for reimbursing the costs to a State
13 or unit of local government for transporting ju-
14 venile offenders to and from detention facilities
15 that comply with the requirements contained in
16 paragraph (5).

17 On page 72, lines 10 and 11, strike "that would be
18 a felony under State law" and insert "described in section
19 5032(c) of title 18, United States Code".

O:\KOR\KOR97.521

S.L.C.

4

1 On page 74, line 17, strike "prohibited physical con-
2 tact" and insert "any contact".

3 On page 75, between lines 19 and 20, insert the fol-
4 lowing:

5 "(4) ACTION PLAN.—

6 "(A) IN GENERAL.—To be eligible to re-
7 ceive a grant under this subsection, a State
8 shall prepare, and submit to the Administrator,
9 an action plan that the Administrator deter-
10 mines to meet the requirements of subpara-
11 graph (B).

12 "(B) ACTION PLAN.—An action plan meets
13 the requirements of this subparagraph if the ac-
14 tion plan—

15 "(i) is designed—

16 "(I) to reduce juvenile crime; and

17 "(II) to meet the specific juvenile
18 justice problems of the State in carry-
19 ing out subclause (I);

20 "(ii) contains a survey of the juvenile
21 justice program of the State that is in ex-
22 istence at the time of the application;

O:\KOR\KOR97.521

S.L.C.

5

1 “(iii) contains a detailed analysis of
2 the problems associated with juvenile crime
3 in the State;

4 “(iv) contains a plan for providing ju-
5 venile crime prevention programs and juve-
6 nile offender rehabilitation programs for
7 juveniles and juvenile offenders, includ-
8 ing—

9 “(I) job and literacy training;

10 “(II) remedial education; and

11 “(III) substance abuse treatment;

12 and

13 “(v) contains a detailed plan for the
14 coordination of juvenile justice funding of
15 the State that is in existence at the time
16 of the development of the plan with—

17 “(I) the funds provided to the
18 State under the grant program under
19 this subsection; and

20 “(II) to the extent that the Gov-
21 ernor of the State receives waivers
22 under subparagraph (C), the funds
23 made available to the State under the
24 provisions listed under clause (ii) of
25 that subparagraph for job training,

O:\KOR\KOR97.521

S.L.C.

6

1 remedial education and substance
2 abuse counseling.

3 “(C) ADDITIONAL FUNDING.—

4 “(i) IN GENERAL.—Notwithstanding
5 any other provision of law, at the request
6 of the Governor of a State, the Attorney
7 General, in consultation with the Secretary
8 of Labor, the Secretary of Health and
9 Human Services, and the Secretary of
10 Education, may issue a waiver or take
11 other appropriate action to permit a State
12 to use funds made available to the State
13 under the provisions listed in clause (ii) for
14 juvenile job training, literary training, re-
15 medial education, or substance abuse treat-
16 ment to carry out an action plan that
17 meets the requirements of subparagraph
18 (B).

19 “(ii) PROVISIONS.—The provisions
20 listed under this clause are as follows:

21 “(I) Block Grants for the Pre-
22 vention and Treatment of Substance
23 Abuse.

24 “(II) Mental Health Performance
25 Partnership Grant.

O:\KOR\KOR97.521

S.L.C.

7

1 “(III) Residential Substance
2 Abuse Treatment (RSAT) Program
3 for prisoners.

4 “(IV) Adult Education State
5 Grant Program.

6 “(V) Even Start Family Literacy
7 Program.

8 “(VI) Volunteers in Service to
9 America (VISTA).

10 “(VII) Foster Grandparent Pro-
11 gram.

12 “(VIII) Public Library Services.

13 “(IX) Indian Education Adult
14 Education State Grants.

15 “(X) Carl D. Perkins Vocational
16 and Applied Technical Education
17 Act—Basic State Grants.

18 “(XI) Neglected and Delinquent
19 State Agency Programs (ESEA, title
20 I, part D, subpart 1).

21 “(XII) Tech-Prep Education,
22 title III-E, Carl D. Perkins Act.

23 “(XIII) Safe and Drug Free
24 Schools and Communities, State
25 Grants.

O:\KOR\KOR97.521

S.L.C.

8

1 “(XIV) Basic Vocational Reha-
2 bilitation State Grants.

3 “(XV) Title VII of the Stewart
4 B. McKinney Homeless Assistance
5 Act.

6 “(XVI) Job Training Partnership
7 Act (Adult, Youth, and Summer).

8 “(XVII) Wagner-Peyser Act—
9 State Grants and One-Stop.

10 “(XVIII) School-to-Work Oppor-
11 tunities Act.

12 “(5) ADDITIONAL REQUIREMENTS.—

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (B), in order to be eligible for an
15 incentive grant under this subsection, a State
16 shall have in effect laws that provide that no ju-
17 venile shall be detained or confined in any jail
18 or lockup for adults.

19 “(B) REGULATIONS.—The Administrator
20 shall for each fiscal year through ____, promul-
21 gate regulations that make exceptions to the re-
22 quirement under subparagraph (A) for juveniles
23 accused of nonstatus offenses (as that term is
24 defined by the Administrator) who are awaiting
25 an initial court appearance under an applicable

O:\KOR\KOR97.521

S.L.C.

9

1 State law requiring such an appearance within
2 24 hours after being taken into custody (exclud-
3 ing weekends and holidays). The exemptions
4 shall only apply to areas that are—

5 “(i) in compliance with the require-
6 ments of paragraph (3)(E);

7 “(ii)(I) are outside a Metropolitan
8 Statistical Area;

9 “(II) are located where conditions of
10 distance to be traveled or the lack of high-
11 way, road, or other ground transportation
12 do not allow for court appearances within
13 the specified 24-hour period, so that a
14 brief delay of a period not to exceed 48
15 hours is excusable; or

16 “(III) are located where conditions of
17 safety exist (such as severely adverse, life-
18 threatening weather conditions that do not
19 allow for reasonably safe travel), in which
20 case the period for appearance may be ex-
21 tended until 24 hours after the conditions
22 allow for reasonably safe travel.

23 Beginning on page 75, strike line 23 and all that fol-
24 lows through page 76, line 23, and insert the following:

O:\KOR\KOR97.521

S.L.C.

10

1 to the State not less than 50 percent shall be used
2 to provide—

3 “(A) literacy and job training to juvenile
4 offenders; and

5 “(B) substance abuse treatment for juve-
6 nile offenders who have a substance abuse prob-
7 lem; or

Insert A

8 On page 87, strike lines 1 through 7 (relating to pro-
9 hibition on spending funds on job training programs).

10 On page 87, line 8, strike “(D)” and insert “(C)”.

11 On page 88, line 11, strike “(E)” and insert “(D)”.

12 On page 88, line 21, strike “(D) or (E)” and insert
13 “(C) or (D)”.

14 On page 89, lines 3 and 4, strike “(D) or (E)” and
15 insert “(C) or (D)”.

16 On page 119, strike lines 16 through 18 (relating to
17 repeal of section 517 of the Public Health Service Act).

Insert A

- (C) After-school and other community-based programs for the reduction and prevention of truancy, school violence, and juvenile crime.

O:\KOR\KOR97.521

S.L.C.

11

- 1 On page 119, line 19, strike "(c)" and insert "(b)".
- 2 On page 119, line 22, strike "(d)" and insert "(c)".
- 3 On page 121, strike lines 1 through 3 (relating to
- 4 repeal of chapters 1 and 2 of subtitle B of title III of
- 5 the Anti-Drug Abuse Act of 1988).

Re: Specter Amendment to Juvenile Justice Bill

We thought we should give you a heads-up about some possible education-related amendments to the Juvenile Justice bill that could be considered next week.

I. Specter Amendment

Senator Specter has prepared an amendment which would, as one feature, create a broad new cross-agency waiver authority. At the request of a governor, this amendment would allow the AG, "in consultation with" the Secretaries of Labor, HHS and Education, to waive "or take other appropriate action" to permit the State to use funds under 18 federal programs for the purpose of juvenile job training, literacy training, remedial education, or substance abuse treatment as laid out in a state juvenile crime/juvenile justice action plan. Some of the more significant education programs covered include School-to-Work, Adult Education, Vocational Education, Even Start, Safe and Drug Free Schools and Vocational Rehabilitation. Two of the few major K-12 programs that aren't covered are the Title I program and Goals 2000.

ED S
and we agree -
We see major problems with Specter's proposed waiver authority. Among other things: it would give the AG power over programs that other cabinet members are responsible for; it provides literally no criteria or process for granting waivers; it provides essentially no limits on the scope of waivers; and it appears to be unconnected to any performance or accountability requirements, and Almost all of the education programs, and at least some of the others, are already subject to the Secretary's waiver authority. In short, it's even faultier than Hatfield's Local Flex bill that caused such enormous headaches during the last Congress.

this has all of the weaknesses in Hatfield's Local Flex bill, and none of the redeeming features that some found attractive
Specter asked Education and other agencies for their views on the amendment; late this week they provided "technical assistance," suggesting that the legislation direct the Secretaries to consider waivers under current law and grant them when appropriate. Specter's staff did not agree with this approach, but indicated they would go back and draft something more targeted. Biden's staff was present, too, and indicated Biden wanted to be as supportive as he could possibly be.

Instead Not seriously,
If it looks anything like the draft we have seen, the Administration should oppose this amendment, and avoid getting dragged into efforts to try to fix it.

II. Hatch Amendments

We hear that Hatch is considering offering 3 separate voucher amendments if he thinks that Democrats aren't being cooperative enough.

- The text of Title I-A of S. 1, which would authorize a new \$50 million program to fund vouchers for students to escape "unsafe schools."
- The text of Title I-B of S. 1, which would permit LEAs to give a voucher to a Title I student who is the victim of a "violent criminal offense."

- An amendment which would require states to have a voucher program as a condition of eligibility for the federal juvenile justice block grant funds.

The Administration has already taken a position against S. 1. As for the third voucher amendment, if anything, it is even more objectionable because it would essentially place an unfunded mandate on states to operate voucher programs.

III. Grassley Amendments

We hear that Grassley has prepared an amendment that would dramatically expand the gun-free schools law. The amendment would require expulsion for a long list of offenses include bringing drugs and drug paraphernalia to school, as well as regular use of alcohol or tobacco. We have few details on this, and haven't seen any language, but this sounds like is likely to go way beyond a reasonable extension of Gun-Free Schools.

DRAFT

To Bruce Reed

From Mike Cohen and Bill Kincaid

Re: Specter Amendment to Juvenile Justice Bill

We thought we should give you a heads-up about some possible education-related amendments to the Juvenile Justice bill that could be considered next week.

I. Specter Amendment

Senator Specter has prepared an amendment which would, as one feature, create a broad new cross-agency waiver authority. At the request of a governor, this amendment would allow the AG, "in consultation with" the Secretaries of Labor, HHS and Education, to waive "or take other appropriate action" to permit the State to use funds under 18 federal programs for the purpose of juvenile job training, literacy training, remedial education, or substance abuse treatment as laid out in a state juvenile crime/juvenile justice action plan. Some of the more significant education programs covered include School-to-Work, Adult Education, Vocational Education, Even Start, Safe and Drug Free Schools and Vocational Rehabilitation. Two of the few major K-12 programs that aren't covered are the Title I program and Goals 2000.

We see major problems with Specter's proposed waiver authority. Among other things: it would give the AG power over programs that other cabinet members are responsible for; it provides literally no criteria or process for granting waivers; it provides essentially no limits on the scope of waivers; and it appears to be unconnected to any performance or accountability requirements. Almost all of the education programs, and at least some of the others, are already subject to the Secretary's waiver authority. In short, it's even faultier than Hatfield's Local Flex bill that caused such enormous headaches during the last Congress.

Specter asked Education and other agencies for their views on the amendment; late this week they provided technical assistance, suggesting that the legislation direct the Secretaries to consider waivers under current law and grant them when appropriate. Specter's staff did not agree with this approach, but indicated they would go back and draft something more targeted. Biden's staff was present, too, and indicated Biden wanted to be as supportive as he could possibly be.

If it looks anything like the draft we have seen, the Administration should oppose this amendment, and avoid getting dragged into efforts to try to fix it.

II. Hatch Amendments

We hear that Hatch is considering offering 3 separate voucher amendments if he thinks that Democrats aren't being cooperative enough.

- The text of Title I-A of S. 1, which would authorize a new \$50 million program to fund vouchers for students to escape “unsafe schools.”
- The text of Title I-B of S. 1, which would permit LEAs to give a voucher to a Title I student who is the victim of a “violent criminal offense.”
- An amendment which would require states to have a voucher program as a condition of eligibility for the federal juvenile justice block grant funds.

The Administration has already taken a position against S. 1. As for the third voucher amendment, if anything, it is even more objectionable because it would essentially place an unfunded mandate on states to operate voucher programs.

III. Grassley Amendments

We hear that Grassley has prepared an amendment that would dramatically expand the gun-free schools law. The amendment would supposedly require expulsion for a long list of offenses include bringing drugs and drug paraphernalia to school, as well as regular use of alcohol or tobacco. We have few details on this, and haven’t seen any language, but if the amendment is anything like what we have heard, it sounds as though it would go way beyond a reasonable extension of Gun-Free Schools.