

Draft Managers Report National Testing

Managers and the Administration agree that it is important to have high, voluntary national standards in the basic skills of reading and math, to measure whether students are meeting these standards, and to provide that information to students, parents and teachers. The Administration has proposed voluntary national tests in order to measure student achievement related to national standards. However, every state already administers a number of tests, and many are concerned that an additional, national, test would be an unnecessary burden.

To address this concern, the National Academy of Sciences will be commissioned to conduct a study of the feasibility of equating existing state and commercially available tests with each other and with the National Assessment of Educational Progress. The purpose of this study is to determine whether it will be possible to use existing tests administered by states and local school districts to compare individual student performance with existing, challenging national content and performance standards. The purpose is also to determine if the same tests can be used to compare the performance of students in different states and communities, on different tests, to each other. The NAS shall report the results of this study to the Congress no later than June 1, 1997.

The NAS will conduct this study in consultation with the National Governors' Association (NGA), the National Conference of State Legislatures (NCSL), NAGB, the Congress and the White House. While the NAS study is being conducted, NAGB will oversee the development of voluntary national tests in 4th grade reading and 8th grade math, which will be based on the same content and performance standards as are used for NAEP, and which are linked to NAEP to the maximum extent possible. However, no pilot testing of items for the national test may be conducted until June 1, 1997, the deadline for the NAS report.

The Administration and the House Committee on Education and the Workforce will work together to incorporate the findings from the NAS study into the reauthorization of NAEP and NAGB. The Administration agrees that, where it is feasible and practical to validly and reliably equate test scores and link performance levels on State assessments and commercially available standardized tests with the National Assessment of Education Progress, then these tests may serve the same purpose as the proposed national test. To the extent that NAS study demonstrates ways in which existing tests can be equated with each other and with NAEP, or ways in which existing tests can be modified in order to facilitate such equating, the Administration and the House Committee on Education and the Workforce intend to work together to implement these recommendations through the reauthorization of NAEP.

THE WHITE HOUSE
WASHINGTON

September 19, 1997

MEMORANDUM FOR ERSKINE BOWLES

FROM: BRUCE REED
MIKE COHEN

SUBJECT: CONFERENCE STRATEGY FOR NATIONAL TESTS

White House and Education Department staff met this week to develop a conference strategy for the national testing initiative. This memo outlines our basic approach.

I. Basic Objectives

We must come out of the conference with a bill that provides both the authority and the funds to proceed with the testing initiative, and with the tests under the control of an independent National Assessment Governing Board. The Senate bill provides the NAGB provisions we need. However, neither bill provides the funds. The Gorton block-grant amendment in the Senate eliminated the funds for the Fund for Improving Education (the account from which test development is funded), while the Goodling amendment prohibits the use of any funds for test development.

At the same time we should keep working to assemble a veto-proof margin of support for these provisions in the House. This requires picking up 20 votes over the 125 who initially opposed Goodling. In addition, in order to put the testing plan on firmer footing over the long haul, we will aim generally to secure broader support within the Democratic Caucus and among moderate Republicans in the House.

II. Timing

The conferees are likely to be appointed and begin work next week. In addition to the conventional practice of naming the subcommittee chairs, it is conceivable that Goodling will push to be named a conferee as well.

Staff from Legislative Affairs predict that this will be a long conference, with the prospect of one or more short-term CR's that will carry us through to mid-October before likely completion.

The testing issue will be one of the most difficult conference issues, along with the Gorton amendment and funding levels for several specific programs including Goals 2000, Pell, and

America Reads. Outside of education, it appears that the Teamsters election will also be a difficult issue. At this point, it is too early to determine the likely interplay among these issues, the tradeoffs we may be forced to consider among them, or additional modifications to the testing initiative itself that we will need to consider. As we continue to consult with our current and most likely supporters in the House, we will clarify what our options are likely to be.

III. Communications

Our best strategy for achieving victory is to convince the Republicans that they will pay a heavy price, again, for opposing our efforts to improve public education.

Therefore, we will work to tie the House vote on testing, the Senate block grant vote, and the anticipated DC voucher proposals together to support an overall message that the President is trying to improve public education, while Republicans are once again trying to abandon and weaken it.

We have several key opportunities to begin to hammer the message home over the next several weeks, starting with this Saturday's radio address and Charter Schools event. The Education Department is planning a press conference for Secretary Riley next week to amplify this message, and we are working with the Vice President's office to develop events that would enable him to carry this message as well. In addition, we will look for additional events for the President and other principals in the next several weeks.

The Education Department will continue its efforts to speak to editorial boards around the country, now targeting key editorial boards in the states and districts of conferees.

We will again urge business leaders -- CEO's affiliated with the Business Roundtable, the Chamber of Commerce, and the National Alliance of Business, as well as the high tech CEO's who endorsed the President's plan last Spring -- to place op-eds in support of the tests and to seek other opportunities to visibly highlight their support. In addition, we will ask supportive Republican opinion leaders (e.g., Finn, Ravitch, Engler) to place op-eds. Both groups can be particularly helpful in framing the Senate provision as a compromise House Republicans can and should accept.

IV. Legislative

White House and Education Department staff, as well as Secretary Riley, will work with our friends in the House to determine how best to broaden our support on both sides of the aisle. On the Republican side, Porter, Riggs and Castle are most likely to assemble moderate support behind the Senate provisions, though it is not yet clear how they will deal with Goodling, who remains dug in. We expect our business supporters to reach out to both the House Republican leadership and targeted members who are most likely to be supportive.

On the Democratic side, we will continue to work to address concerns of the Black and Hispanic Caucuses. Secretary Riley will meet next week with Reps. Harold Ford Jr., Al Wynn and Chaka Fattah, the three members of the Black Caucus who voted against Goodling, to seek their advice on how we can best approach others in the Caucus. Right now, we believe the primary issue for

the CBC is school construction. If it becomes clear that the support of the Black Caucus for the tests can be gained only by committing to a school construction initiative, we would recommend serious consideration of this, outside our normal budget process. In this case, the best move we can make on this front in the short-term would be to support the Daschle/Gephardt proposal.

We will continue to look for steps we can take to reduce the concerns of the Hispanic Caucus. As you know, the central issue here is our decision to give the reading test only in English. We are exploring a number of ways to address this. One would identify existing, commercially available reading tests in Spanish that are based on the same national standards as our reading test, and would therefore be highly comparable. We are addressing a number of feasibility issues before we will be ready to discuss this option with the caucus and others in the Hispanic community. This option may not be acceptable to the Hispanic Caucus. However, it would not require Congressional approval, and therefore could not be easily blocked by Republicans. In addition, we can offer one of the new slots on NAGB to an Hispanic mayor. Further, we are working to develop some legislative options (e.g., to explicitly provide for the tests, to permit NAGB to decide whether to provide them) and to determine whether any could be acceptable to the Hispanic Caucus without losing Republican support or precipitating an effort to add language in conference that would prohibit a Spanish language test.

V. Outreach

In addition to the steps above, we will work with our allies in the education and business communities to continue to support the President's initiatives, oppose amendments that stop them, and mobilize behind our overall message to support public education.

Congressional Proposals

Proposal 1 (Porter): Trigger for implementation by majority of states (or students?)

Key Advantages:

- o Enables implementation to occur without further Congressional authorization

Key Objections:

- o 51% participation is too steep a climb from current participation level (approximately 20%)
- o Subject to disputes about participation (e.g., how do we count L.A. if it is participating in math but not English?)
- o Requirement is unfair to states and cities that have already signed up; their commitment was never conditioned on the participation of others
- o Creates unacceptable uncertainty for current and prospective state and local participants: trigger makes it impossible for them to plan for implementation because the implementation year is unknown.

Possible Improvements:

- o Reduce trigger to 25%-33% range

Proposal 2 (Obey): Make administration of tests an allowable use of funds under Chapter II

Key Advantages:

- o Provides authorization for implementation
- o Provides (imperfect) continuing funding source for state and local administration of the tests (if additional funds provided for Chapter II), eliminating the need for continued Congressional action for implementation

Key Objections:

- o Fails to keep President's pledge to pay for first year of test implementation
- o Limits Administration's ability to fight for reductions in or elimination of Chapter II

Possible improvements:

- o Provide separate FY 1999-only funding for test implementation, either as part of FIE account used to pay for test development, or as new subpart of Chapter II; in subsequent year fold into Chapter II as proposed

Proposal 3 (anticipated from Specter): Proceed with development, but require additional authorization for test implementation

Key Advantages:

- o None

Key Objections:

- o We already have authority under FIE to implement; shouldn't need additional authority
- o There is no reason to put control of the tests back in the hands of a hostile authorizing committee chair who can kill needed legislation; now is the time to resolve this issue

Possible counteroffer:

- o If Congress wants to provide specific authorization for the tests, it can already do so as part of reauthorization of NAGB and NAEP

Possible alternative proposals from Administration

- o Option 1: Implementation proceeds unless Congress enacts legislation prohibiting implementation
- o Option 2: NAGB reports to authorizing and appropriating committees by fixed dates (1) test specifications and sample test items; (2) results of National Academy of Sciences evaluation (already required in both House and Senate-passed bills) of test development and pilot test (perhaps combined with option 1 above--idea is that Congress is provided with ample information about the tests in time for it to prohibit implementation if it wishes, and before implementation funds are appropriated
- o Option 3: Congress will take up reauthorization of NAEP and NAGB sometime this session; that is appropriate vehicle for any action Congress wants--from specific authorization to prohibition
- o Option 4: Congress removes ban from current NAGB/NAEP legislation prohibiting NAEP from being used to test individual students or to provide school-district and school data, and authorizes NAGB to develop individual version of NAEP for administration at state or local option

(Note: This one is a stretch: it does precisely what we are already trying to do, but puts it on different terms: Instead of using general authority to create a national test, and get around specific prohibition in NAEP statute, we are simply asking them to end the specific prohibition. The only reason this might work at all is because the Republicans have generally hated the existing prohibition, a provision stuck in by Dem's at the insistence of the education groups:)

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October 18, 1997

MEMORANDUM FOR BRUCE REED
ELENA KAGAN
MIKE SMITH

FROM: MIKE COHEN

SUBJECT: NATIONAL TEST COMPROMISES

The purpose of this memo is to summarize Friday's discussion about possible compromises on the national test, to place the options we considered in a broader context, and to raise several additional issues.

I. Provisions already likely to be part of the final package

There are two key provisions already in the Senate-or House-passed bills that will almost certainly be part of the final testing provisions.

- NAGB in control of tests: It is virtually impossible to imagine any compromise that won't retain this provision. However, there are several issues that are likely to come up before this is finalized.

Finn and Ravitch now regret their proposal to eliminate the testing experts on NAGB, and to add mayors (who they view as unduly subject to local, parochial pressures). I believe I've read that Goodling has said that the testing experts should remain on NAGB. While these are not major issues, I would recommend that we agree to add back some or all of the testing experts, and that we hold on to the slots for mayors; we have talked about using one of them for a Hispanic mayor.

AFT has raised more general concerns about NAGB's technical capacity and access to technical expertise. They want to make sure that NAGB can continue to rely on NCES staff for support. We need to make sure that the current provisions don't preclude this (I don't believe they do), and check with Mark Musick (NAGB's chair) about NAGB's views on this. In addition, within the past few weeks we have requested an additional \$600K-\$1 million for NAGB in FY 98, so that it can handle its new responsibilities. I need to check on the status of this request.

- National Academy of Science evaluation of 1998 pilot test: Both the House and Senate bills have somewhat different provisions that require the National Academy of Sciences to conduct an evaluation of the pilot test and report to Congress before next year's appropriations decisions are made. The Education Department had already been planning

to contract with NAS for an evaluation, and we supported these provisions. The timeline for the reports is very tight, and there will be very little time between the March pilot test and the dates for providing the report.

II. Possible Additional Compromises

Below are four compromise proposals that DPC and ED think we can offer and work from. We would put them on the table one at a time, essentially in the order listed below, and use as few of them as needed.

- Linking state and/or commercial tests to the national test: NAGB would work with interested states and school districts, on a voluntary basis, to determine if the reading and math tests used by the state or local district could be statistically linked to the national test (or to NAEP??). If so, this would enable the state or district to administer its own test--instead of the national test developed by NAGB--and report the results in terms of national standards and achievement levels. NAGB would be given the authority to determine the criteria tests must meet in order for results to be reported in terms of national standards, and would therefore be able to determine if a state could use its own test as an appropriate substitute for the national test.

At its best, this approach essentially creates a system of national content and performance standards in reading and math and an anchor test which is either administered to all students in a jurisdiction, or which becomes the benchmark against which other tests are calibrated. This approach therefore contemplates that more than one test that could be used to measure student performance against the standards, though it does not presume that therefore any and every 4th grade reading and 8th grade math test could be meaningfully linked to the national standards.

We still have several issues to sort out under this option. First, how would this approach actually work, and how will we describe NAGB's authority to carry out its responsibilities here (do we provide general language that authorizes linking studies and requires NAGB to figure out, by a date certain, a plan for doing carrying out this approach, or do we need to spell out how this would work in some detail in the legislation itself? Second, do we treat states, local school districts and commercial publishers all on the same footing? Can all of them "bring their test to NAGB"? Third--how do we pay for this work to get done? How much additional are we likely to need, and will we need additional funds in FY 98 or later? Should the federal government pay the total cost of linking a test to the national test, or should it require some kind of cost-sharing?

- Consider 1999 as a Field Test year rather than the first year of full scale implementation: Instead of implementing the tests in the Spring of 1999, we would treat 1999 as a field test, to try out the procedures for publicizing, preparing students for, administering and reporting the results of the national test. Unlike the Spring 1998 pilot test which involves a national sample of students, this field test would involve the administration of the test to every student in a participating jurisdiction. We should also fund an evaluation of the

field test.

From the public's point of view, the field test is an opportunity to get the "kinks" out of the system before full scale implementation. From our point of view, it is a recognition that state and local participation is not likely to skyrocket over the next 18 months. It could also be an incredible marketing opportunity for us. We could work closely with a finite set of jurisdictions to help them mobilize significant efforts to prepare kids for the tests, and demonstrate the value of the materials we will develop and the resources we will provide, such as information for parents, reading tutors, teacher training materials, etc. This would enable us to show that the tests are, as the President has said, "...about lifting people up, not putting them down."

There are a couple of issues we still need to address here. First, I believe we should still ask Congress to appropriate funds for the field test (perhaps capped at some figure). If so, we may want to authorize that in whatever compromise is ultimately fashioned. (If we are able to do this, I think we should also seriously consider Obey's proposal for making the administration of the tests an allowable use of Chapter II funds for subsequent years; while the formula isn't great, taking Obey's proposal for 2000 and beyond would provide specific authorization for implementation, and would take care of long term funding for implementation as effectively as anything else we are likely to get.)

Second, we need to check with the states and districts that have already signed up and see how such a move would affect their decision. I doubt it would have a serious impact in most cases (especially if we continued to fund the 1999 administration), but I want to find out if I'm wrong before we go too far down this road.

- Report to Congress on Field Test: We could be required to submit a full report on the field test to Congress by a fixed deadline, after the Spring 1999 field test but before implementation in 2000. While we would agree to do no more than report our findings to Congress, there is implicit in the reporting requirement that, particularly if there are problems uncovered in the field test, then Congress could act to ban additional implementations.
- Cap participation in the 1999 Field Test: If necessary, we could limit participation in the Field Test phase, perhaps to jurisdictions with no more than 50% of the kids.

I believe we could live with all of these provisions, although both the linking option and the field test options increase the odds that the tests never get off the ground, either because the substitutes are easier and less costly to use, or because the timeline is pushed back too far into the future. Certainly taken together, these provisions would mean that the particulars of the testing initiative--the fact that the test items will be released to the public, the procedures for reporting test results, the material provided leading up to the test to encourage and help students, schools and parents to prepare for the tests--more than the idea of national standards and tests, will need

to operate well enough to capture the attention and strong interest of parents, educators and policymakers. From that perspective, the field test may be a good thing, because it will provide a deliberately limited but highly visible opportunity to demonstrate to the nation the value of the tests to those who participate. We can work with states and districts to make this a success for them and for us.

In addition, if we combine the already-required NAS report to Congress after the pilot test with our proposed additional report after the field test, we can make a pretty strong argument that we are giving Congress a number of additional opportunities to be involved in this initiative, to make mid-course corrections it determines are needed based on the reports, and to end the program if it wishes to. Consequently, we could argue more effectively that there should be no need for a specific Congressional authorization before we proceed with implementation.

III. Implications for Discussions with the Hispanic and Black Caucuses

Several of the options above may have implications for the issues raised by the civil rights groups and the caucuses.

- Testing LEP kids: Our approach to testing LEP kids has been to explore the feasibility of encouraging commercial publishers to link existing reading comprehension tests in Spanish and other languages to the national test. Our proposal for linking existing tests to the national tests more generally makes it easier to advance this option. Ideally, the statutory language we draft about the linking studies would not preclude tests in other languages, though I'm still inclined to try and avoid language that would explicitly permit it.

We would still need to work out administration and reporting issues with interested districts. It occurs to me that, if we went down this road, it might well turn out to be easier for cities that wanted to give a linked Spanish-language reading comprehension test to give the English version of that test (presumably also linked to the national test) rather than the national test.

- High stakes testing: We have already indicated to the civil rights groups that we would have no problem making clear that the national test was not validated for high stakes purposes, and describing what kind of validation studies would need to be conducted at the local or state level in order for the test to be used for high stakes purposes.

Our Field Test proposal would make it relatively easy for us to prohibit the use of the test for high stakes purposes at least until 2000--not all that the civil rights groups want, but a step in their direction.

At the same time, the proposal for linking other tests to the national test could make it more likely that some tests that are part of this national testing system could be used for high stakes purposes, on the assumption that state and local tests are more likely to be validated for high stakes purposes. I presume that if a state or district wanted to require

that kids meet the NAEP achievement level in order to be promoted, the state or district would have to be able to demonstrate the validity of that cut point for that particular use.

I would anticipate that the civil rights groups would want us to prohibit high stakes testing for any test that is linked to national standards. This would be a huge mistake.

- Reporting Requirements: The civil rights groups want us to use the Title 1 reporting requirements for the national test. State and local tests linked to the national test are likely to be the tests used for Title 1 purposes, and therefore will already have to meet these requirements. This solves some fraction of the civil rights groups concern, though not the major one. It isn't clear to me if these new circumstances would make it any easier for NAGB to require that the national tests be reported in a manner consistent with the Title 1 requirements, or more appropriate for us to advocate such a move.
- Accommodations: I need some help on this one. If we are going to link state and local tests to the national test, would there need to be any specific comparability in the types of accommodations between the tests? Would the same answer hold true for inclusion/exclusion criteria for LEP kids and kids with disabilities?

Finally, we might want to think about how we could design and conduct the field test so that we demonstrate and learn some things about how the tests can best be used to help low income and minority kids boost their achievement. This might involve several components, including, off the top of my head: (1) a component of the evaluation design that looks specifically at the impact of the testing on low income and minority students; (2) special help to participating jurisdictions on the most effective use of federal resources; (3) in partnership with business, community and other groups, a serious America Reads-like effort to mobilize out-of-school resources to help kids prepare for the tests, including, for example, the intensive efforts that OBEMLA is planning for a number of urban communities with a focus on LEP kids and their families.

Section (c)

Reads "No State or local educational agency may require any private or parochial school student, or home-schooled individual, to take any test developed under this Act without the written consent of the student or individual."

Suggested Change

Transform this section to a "Bill of Rights" for home schooled students, parents in public schools, parochial school students, LEAs and States.

**PL: 103-382 Improving America's Schools Act of 1994, Signed by the President,
October 20, 1994**

Section 412(f)(2)(A)

Reads "The Secretary *may* appoint at the *request* of...responsibilities"

Suggested Change

"The Secretary shall appoint, at the direction of the Board...responsibilities."

Section 412(f)(2)(B)

Reads "Such appointments...*six* technical employees...pay rates."

Suggested Change

Change six to ten

Section 413(c)

Reads "There are authorized...\$3,000,000....section 412."

Suggested Change

Change \$3,000,000 to \$4,000,000

SENATE BILL LANGUAGE ON TESTING

- Gives the National Assessment Governing Board (NAGBY) the exclusive authority over all policies, direction and guidelines for establishing voluntary national tests for 4th grade reading and 8th grade math.
- Directs the NAGBY to ensure that the content and standards for the test shall be the same as the current National Assessment of Educational Progress Test.
- Changes the composition of the 25 member NAGBY Board to ensure that it is a bi-partisan and independent board and gives NAGBY the authority to nominate individuals to that board.
- Reaffirms that the use of the tests cannot be a condition of receiving federal funds.
- Reaffirms that no private, parochial or home-schooled student may be required to take the tests without the written consent of the student or individual.
- Requires the Office of Educational Research and Improvement to submit to the Senate Committees on Appropriations a spending plan for activities funded under that office.

PROPOSED ADDITIONS TO THE SENATE BILL LANGUAGE ON TESTING

- ✓ None of the funds in this Act shall be used to implement or administer any national testing program in reading or mathematics, except for the National Assessment of Progress (NAEP) and the Third International Math and Science Study (TIMSS).
by the federal gov't
- ✓ The use of the tests shall be completely voluntary and no state or school district shall be required to implement or administer such tests.
- ✓ Nothing in this Act shall be construed as a mandate, directive, or requirement that a state, school district, or school alter its curriculum, program of instruction, or allocation of state or local resources as a condition of participating in the national testing program. *[from G-21c]*
- ✓ No individual student test scores shall be reported to the Federal government.

① See attached
Leg. language
drafted by
Jack -
with changes
needed

S 1061 - Gregg-Conte

Section(b)(9)

Reads "That the tests shall be made available to a State, local educational agency, or private or parochial school.... any Federal funds."

Suggested Change

"That the tests shall be made available to a State, local educational agency. (insert) *qualified private testing organizations*, or private or parochial school....any Federal funds."

(b)(1)

(13)-(21)

Reads "That within 90 days after the date of enactment of this Act, the Board shall review the national test development contract....as the Board determines necessary..."

Suggested Change I

"That within 120 days after the enactment of this Act, the Board shall review all *contracts and grants pertaining to the proposed national tests* ... (make all subsequent references in plural)

Suggested Change II

Insert the following:

"And provided further, that within 30 days after the date of enactment of this Act, the Secretary shall, by written delegation of authority, authorize the Board to serve as the administrative contracting officer for all current and subsequent contracts and grants pertaining to the national tests. The Board shall have authority to negotiate, award, and administer all contracts and grants pertaining to the national tests."

(b)(2)

(C)

Reads "ensure that the tests are linked to the National Assessment to the maximum degree possible."

Suggested Change

"ensure that the tests are linked to the National Assessment and the *International TIMSS* to the maximum degree possible."

Insert (J)

"The Board shall elect its own Chairman and other officers."

Section (e)

Reads "No State or local educational agency may require any private or parochial school student, or home-schooled individual, to take any test developed under this Act without the written consent of the student or individual."

Suggested Change

Transform this section to a "Bill of Rights" for home schooled students, parents in public schools, parochial school students, LEAs and States.

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Name: Kristy, Jack

U.S. Department of Education
Office of the Deputy Secretary - Control Document

Assigned to: ODS

Action: APPROPRIATE HANDLING
Signature: DS

Control #: DS97-19935
Priority: OS
Due Date: 10/30/97
DS Doc #: 59560

Writer: Kristy, Jack
Title:
Organization: Office of General Counsel
Salutation:

Subject: LEGISLATIVE 0 CONFERENCE PROPOSAL FOR NATIONAL TESTING

Notes:

URGENT

RETURN ALL DOCUMENTS RELATED TO THIS CONTROL TO MARGIE LEWIS, 6236 FB-10B

----- Assignment Tracking Section -----

ASSIGNED	COMMENT	DATE	DUE	RETURNED
ODS-DS	APPROPRIATE HANDLING	10/30/97	10/30/97	

Keyer: ML

Reader: ML

Related Control #:

WP File:

URGENT

Note to: Mike Smith, Terry Peterson, Jamie Studley, Scott Fleming

From: Jack Kristy

Date: October 30, 1997

Concerning: Conference Proposal for National Testing

We have reviewed the eight page package* (draft sections 524 and 525) forwarded by the White House last evening, and these are your conclusions:

- (1) Both sections 524 and 525 are "permanent" legislation, i.e., their effect is not tied solely to the funds appropriated for FY 1998.
- (2) Section 524 consists of the original Gregg/Coats amendment, plus a series of additional provisions (page 3, line 11 through page 4, line 5 and page 4, line 11 through page 5, line 13) designed to delay implementation of the tests until adequate field-testing is conducted; prohibit the Federal Government from requiring States and LEAs to use the tests; prohibit the reporting of the scores of individual students to the Federal Government; ensure that the tests are properly validated for any use States or LEAs intend; and require the National Academy of Sciences to submit a report by September 30, 1998 that evaluates the quality, validity, and utility of the tests and their development and contains recommendations for appropriate safeguards to ensure that the tests are not used for discriminatory purposes, or for any purpose for which they are not properly validated. While quibbles could be raised about certain word choices in these additional provisions, we do not see significant legal or policy problems with them. (Indeed, they were included on the recent "master list" of possible amendments that ED could live with.)
- (3) Section 525 would prohibit the use of funds appropriated in this act, as well as any past or future appropriation act, to "implement or administer any national testing program in 4th grade reading or 8th grade mathematics, unless specifically authorized in statute," but would allow any such appropriations to be used for development or field-testing activities. The "unless specifically authorized in statute" limitation does not appear to us to be a significant problem, because it could be satisfied by a simple, express, statutory earmark in an appropriation, and would not require a free-standing "authorization act." Thus, the only funding option for the national tests it would make unavailable would be the use of non-earmarked appropriations under some broad discretionary authority, such as FIE. However, you may want to consider the impact of the September 30, 1998 due date for the proposed report of the National Academy of Sciences on the availability of implementation funds through next year's appropriation.
- (4) The Appointments Clause problems persist.

* Page seven of the proposal is missing, and we have not reviewed it, although it appears to be nothing more than the Gregg/Coats provisions relating to NAGB vacancies and independence.

cc: Paul Riddle, Steve Winnick, Phil Rosenfelt

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Mike C

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Paul
Mike Cohen

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H.L.O.

CONFERENCE PROPOSAL FOR 2264 (Labor, EHS)

1 SEC. 524. (a) Notwithstanding any other provision
2 of law, the Office of Educational Research and Improve-
3 ment shall submit to the Committee on Appropriations of
4 the House of Representatives and the Senate a spending
5 plan for activities funded under this title under the head-
6 ing "EDUCATION RESEARCH, STATISTICS, AND IMPROVE-
7 MENT", prior to the obligation of the funds.

8 (b)(1) Notwithstanding any other provision of law,
9 the National Assessment Governing Board established
10 under section 412 of the National Education Statistics Act
11 of 1994 (20 U.S.C. 9011) (hereafter in this section re-
12 ferred to as the "Board") shall hereafter have exclusive
13 authority over all policies, direction, and guidelines for es-
14 tablishing and implementing voluntary national tests for
15 4th grade English reading and 8th grade mathematics:
16 *Provided*, That the tests shall be made available to a State,
17 local educational agency, or private or parochial school,
18 upon the request of the State, agency, or school, and the
19 use of the tests shall not be a condition for receiving any
20 Federal funds: *Provided further*, That within 90 days after
21 the date of enactment of this Act, the Board shall review
22 the national test development contract in effect on the
23 date of enactment of this Act, and modify the contract
24 as the Board determines necessary. *Provided further*, That

October 28, 1997 (9:54 a.m.)

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1 if the contract cannot be modified to the extent deter-
2 mined necessary by the Board, the contract shall be termi-
3 nated and the Board shall negotiate a new contract, under
4 the Board's exclusive control, for the tests.

5 (2) In exercising the Board's responsibilities under
6 paragraph (1) regarding the national tests, and notwith-
7 standing any action undertaken by the Department of
8 Education or a person contracting with or providing serv-
9 ices for the Department regarding the planning, or the
10 development of specifications, for the tests, the Board
11 shall—

12 (A) ensure that the content and standards for
13 the tests are the same as the content and standards
14 for the National Assessment;

15 (B) exercise exclusive authority over any expert
16 panel or advisory committee that will be or is estab-
17 lished with respect to the tests;

18 (C) ensure that the tests are linked to the Na-
19 tional Assessment to the maximum degree possible;

20 (D) develop test objectives, test specifications,
21 and test methodology;

22 (E) develop policies for test administration, in-
23 cluding guidelines for inclusion of, and accommoda-
24 tions for, students with disabilities and students
25 with limited English proficiency;

October 29, 1997 (9:54 a.m.)

1 (F) develop policies for reporting test results,
2 including the use of standards or performance levels,
3 and for test use;

4 (G) have final authority over the appropriate-
5 ness of all test items;

6 (H) ensure that all items selected for use on the
7 tests are free from racial, cultural, or gender bias;
8 and

9 (I) take such actions and make such policies as
10 the Board determines necessary.

11 * (3) No voluntary national tests for 4th grade reading
12 and 8th grade mathematics shall be implemented or ad-
13 ministered until the end of the 60-day period following the
14 development and field-testing of such tests, during which
15 period the National Assessment Governing Board shall
16 hold public hearings at which interested parties may com-
17 ment on the testing program.

18 * (c) The Federal Government may not require any
19 State or local educational agency to administer or imple-
20 ment national tests for 4th grade reading and 8th grade
21 mathematics.

22 * (d) No State, local educational agency, or school shall
23 report, or be required to report, the scores of individual
24 students on any tests described in this section to any offi-
25 cer or employee of the Federal Government.

October 29, 1997 (11:54 a.m.)

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1 * (e) No State, local educational agency, or school may
2 use national tests for 4th grade reading and 8th grade
3 mathematics for student promotion, tracking, graduation,
4 or any other purpose unless such tests have been properly
5 validated for such purpose.

6 (f) No State or local educational agency may require
7 any private or parochial school student, or home-schooled
8 individual, to take any test developed under this section
9 without the written consent of the parents or legal guard-
10 ians of the student or individual.

11 * (g) The National Academy of Sciences shall, not later
12 than September 30, 1998, submit a report to the Board,
13 the Secretary of Education, and Congress that—

14 (1) evaluates—

15 (A) the technical quality of the national
16 tests for 4th grade reading and 8th grade
17 mathematics;

18 (B) the validity, reliability, and adequacy
19 of the administration of the field tests;

20 (C) the validity of the design for linking
21 test results to student performance; and

22 (D) the degree to which the tests will pro-
23 vide valid and useful information to the public;
24 and

October 29, 1997 (954 W.R.)

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5

1 (2) recommends appropriate safeguards to en-
2 sure that such tests are not used—

3 (A) in a discriminatory manner, and

4 (B) for any purpose, including student pro-
5 motion, tracking, or graduation, unless such
6 tests have been properly validated for such pur-
7 pose.

8 * (h) Nothing in this section is, or shall be construed
9 to mandate, direct, or require a State, local educational
10 agency, or school to change its curriculum, program of in-
11 struction, or allocation of State or local resources as a con-
12 dition of participating in the national testing program
13 under this section.

14 (i) Section 412 of the National Education Statistics
15 Act of 1994 (20 U.S.C. 9011) is amended—

16 (1) in subsection (b)(1)—

17 (A) by amending subparagraph (A) to read
18 as follows:

19 "(A) three Governors, or former Gov-
20 ernors, of whom not more than 1 shall be a
21 member of the same political party as the
22 President;";

23 (B) by amending subparagraph (B) to read
24 as follows:

October 29, 1997 (9:54 a.m.)

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1 “(B) two State legislators, of whom not
2 more than 1 shall be a member of the same po-
3 litical party as the President;”;

4 (C) in subparagraph (H), by striking “one
5 representative” and inserting “three representa-
6 tives”;

7 (D) by amending subparagraph (I) to read
8 as follows:

9 “(I) two mayors, of whom not more than
10 1 shall be a member of the same political party
11 as the President;”;

12 (E) by striking subparagraph (J); and

13 (F) by redesignating subparagraphs (K),
14 (L), and (M) as subparagraphs (J), (K), and
15 (L), respectively;

16 (2) in subsection (c)—

17 (A) in paragraph (1), by striking “and
18 may not exceed a period of 3” and inserting
19 “and shall be for periods of 4”; and

20 (B) in paragraph (2), by inserting “con-
21 secutive” after “two”;

22 (3) by amending subsection (d) to read as fol-
23 lows:

24 “(d) VACANCIES.—As vacancies on the Board occur,
25 new members of the Board shall be appointed by the Sec-

October 23, 1997 (9:54 a.m.)

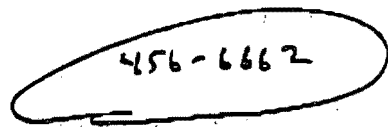
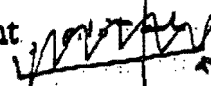
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H.L.C.

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1 SEC. 525. Notwithstanding any other provision of
2 this Act, none of the funds appropriated in this [for any
3 other] Act shall be used to implement or administer any
4 national testing program in 4th grade reading or 8th
5 grade mathematics, unless specifically authorized in stat-
6 ute, *Provided*, That funds may be used for development
7 and field-testing activities that precede the implementa-
8 tion or administration of such tests or to carry out the
9 National Assessment of Educational Progress or the Third
10 International Math and Science Study (TIMSS).



October 20, 1997 (1:54 p.m.)

1 SEC. 525. Notwithstanding any other provision of
2 this Act, none of the funds appropriated in this ~~or~~ any
3 other ~~Act~~ shall be used to implement or administer any
4 national testing program in 4th grade reading or 8th
5 grade mathematics, unless specifically authorized in stat-
6 ute, Provided, That funds may be used for development
7 and field-testing activities that precede the implementa-
8 tion or administration of such tests or to carry out the
9 National Assessment of Educational Progress or the Third
10 International Math and Science Study (TIMSS).

October 29, 1997 (1:24 p.m.)

- Provides that no funds in this Act or any other Act shall be used to implement, administer, or disseminate for the purposes of national testing, national tests, unless specifically authorized in statute, except that funds may be used for development activities that precede the implementation or administration of such tests or to carry out the National Assessment of Educational Progress (NAEP) and the Third International Math and Science Study (TIMSS).
- Gives the National Assessment Governing Board (NAGB) the exclusive authority over all policies, direction and guidelines for establishing voluntary national tests.
- Directs NAGB to ensure that the content and standards for the test shall be the same as the current National Assessment of Educational Progress Test.
- Directs NAGB to ensure that all items selected for use on the tests are free from racial, cultural, or gender bias.
- Changes the composition of the 25 member NAGB to ensure that it is a bi-partisan and independent board and gives NAGB the authority to nominate individuals to that board.
- Requires NAGB to hold public hearings within 120 days after the test development period in which interested parties may comment on the testing program.
- Requires the National Academy of Sciences to submit a report to Congress no later than September 30, 1998 that (1) evaluates the technical quality of the test development, the adequacy of the administration of the field tests, the validity and reliability of the field tests, the validity of the design for linking test results to student performance, and the degree to which the tests provide valid and useful information to the public, and (2) recommends appropriate safeguards to ensure that such tests are not used in a discriminatory manner, and for student promotion, tracking or graduation.
- Requires the National Academy of Sciences, National Governor's Association and National Conference of State Legislatures to jointly conduct a feasibility study to determine if an equivalency scale can be developed that would allow test scores from commercially available standardized tests to be compared, and to submit a report to the authorizing and appropriations committees no later than March 31, 1998.
- Provides that the following shall apply to national tests if authorized:
 1. The federal government may not require any state or local educational agency to administer or implement national tests.
 2. No state, local educational agency, or school shall report, or be required to report, the scores of individual students on any national tests to any officer or employee of the Federal government.
 3. No state, local educational agency, or school may use national tests for student promotion, tracking or graduation.
 4. No state or local educational agency may require any private, parochial or home-schooled student or individual to take any test developed under this Act without the written consent of the parents or legal guardians of the student or individual.
 5. Nothing in this Act shall be construed to mandate, direct, or require that a state, local educational agency, or school change its curriculum, program of instruction, or allocation of state or local resources as a condition of participating in national testing program.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL		# of pages ▶
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<i>Mike Cohen</i>		
Dept./Agency	Phone #	
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<i>456-5581</i>		
NSN 7540-01-317-7368		5089-101
GENERAL SERVICES ADMINISTRATION		

CONFERENCE PROPOSAL FOR 2264 (Labor, HHS)

1 SEC. 524. None of the funds appropriated in this or
2 any other Act shall be used to implement, administer, or
3 disseminate for the purpose of national testing, national
4 tests, unless specifically authorized in statute: *Provided*,
5 That funds may be used for development activities (includ-
6 ing field-testing) that precede the implementation or ad-
7 ministration of such tests or to carry out the National As-
8 sessment of Educational Progress or the Third Inter-
9 national Math and Science Study (TIMSS).

10 SEC. 525. (a)(1) Notwithstanding any other provision
11 of law, the National Assessment Governing Board estab-
12 lished under section 412 of the National Education Statis-
13 tics Act of 1994 (20 U.S.C. 9011) (hereafter in this sec-
14 tion referred to as the "Board") shall hereafter have ex-
15 clusive authority over all policies, direction, and guidelines
16 for establishing and implementing voluntary national
17 tests: *Provided*, That within 90 days after the date of en-
18 actment of this Act, the Board shall review the national
19 test development contract in effect on the date of enact-
20 ment of this Act, and modify the contract as the Board
21 determines necessary: *Provided further*, That if the con-
22 tract cannot be modified to the extent determined nec-
23 essary by the Board, the contract shall be terminated and

1 the Board shall negotiate a new contract, under the
2 Board's exclusive control, for the tests.

3 (2) In exercising the Board's responsibilities under
4 paragraph (1) regarding the national tests, and notwith-
5 standing any action undertaken by the Department of
6 Education or a person contracting with or providing serv-
7 ices for the Department regarding the planning, or the
8 development of specifications, for the tests, the Board
9 shall—

10 (A) ensure that the content and standards for
11 the tests are the same as the content and standards
12 for the National Assessment;

13 (B) exercise exclusive authority over any expert
14 panel or advisory committee that will be or is estab-
15 lished with respect to the tests;

16 (C) ensure that the tests are linked to the Na-
17 tional Assessment to the maximum degree possible;

18 (D) develop test objectives, test specifications,
19 and test methodology;

20 (E) develop policies for test administration, in-
21 cluding guidelines for inclusion of, and accommoda-
22 tions for, students with disabilities and students
23 with limited English proficiency;

1 (F) develop policies for reporting test results,
2 including the use of standards or performance levels,
3 and for test use;

4 (G) have final authority over the appropriate-
5 ness of all test items;

6 (H) ensure that all items selected for use on the
7 tests are free from racial, cultural, or gender bias;
8 and

9 (I) take such actions and make such policies as
10 the Board determines necessary.

11 (3) The National Assessment Governing Board shall
12 hold public hearings at which interested parties may com-
13 ment on the testing program within 120 days after the
14 end of the test development period.

15 (b)(1) The National Academy of Sciences shall, not
16 later than September 30, 1998, submit a report to the
17 Board, the Secretary of Education, and Congress that—

18 (A) evaluates—

19 (i) the technical quality of the national
20 tests;

21 (ii) the validity, reliability, and adequacy of
22 the administration of the field tests;

23 (iii) the validity of the design for linking
24 test results to student performance; and

1 (iv) the degree to which the tests will pro-
2 vide valid and useful information to the public;
3 and

4 (B) recommends appropriate safeguards to en-
5 sure that such tests are not used—

6 (i) in a discriminatory manner; and

7 (ii) for student promotion, tracking, or
8 graduation, unless such tests have been prop-
9 erly validated for such purpose.

10 (2) The National Academy of Sciences, the National
11 Governor's Association, and the National Conference of
12 State Legislatures shall jointly conduct a feasibility study
13 to determine if an equivalency scale can be developed that
14 would allow test scores from commercially available stand-
15 ardized tests to be compared.

16 (3) The National Academy of Sciences, the National
17 Governor's Association, and the National Conference of
18 State Legislatures shall jointly report their findings to the
19 Committee on Education and the Workforce in the House
20 of Representatives and the Committee on Labor and
21 Human Resources in the Senate and the Committees on
22 Appropriations in the House of Representatives and the
23 Senate no later than March 31, 1998.

24 (c) Section 412 of the National Education Statistics
25 Act of 1994 (20 U.S.C. 9011) is amended—

1 (1) in subsection (b)(1)—

2 (A) by amending subparagraph (A) to read
3 as follows:

4 “(A) three Governors, or former Gov-
5 ernors, of whom not more than 1 shall be a
6 member of the same political party as the
7 President;”;

8 (B) by amending subparagraph (B) to read
9 as follows:

10 “(B) two State legislators, of whom not
11 more than 1 shall be a member of the same po-
12 litical party as the President;”;

13 (C) in subparagraph (H), by striking “one
14 representative” and inserting “three representa-
15 tives”;

16 (D) by amending subparagraph (I) to read
17 as follows:

18 “(I) two mayors, of whom not more than
19 1 shall be a member of the same political party
20 as the President;”;

21 (E) by striking subparagraph (J); and

22 (F) by redesignating subparagraphs (K),
23 (L), and (M) as subparagraphs (J), (K), and
24 (L), respectively;

25 (2) in subsection (c)—

1 (A) in paragraph (1), by striking "and
2 may not exceed a period of 3" and inserting
3 "and shall be for periods of 4"; and

4 (B) in paragraph (2), by inserting "con-
5 secutive" after "two";

6 (3) by amending subsection (d) to read as fol-
7 lows:

8 "(d) VACANCIES.—As vacancies on the Board occur,
9 new members of the Board shall be appointed by the Sec-
10 retary from among individuals who are nominated by the
11 Board after consultation with representatives of the indi-
12 viduals described in subsection (b)(1). For each vacancy,
13 the Board shall nominate at least 3 individuals who are
14 qualified by experience or training to fill the particular
15 Board vacancy."; and

16 (4) in subsection (e) by adding at the end the
17 following:

18 "(7) INDEPENDENCE.—In the exercise of its
19 functions, powers, and duties, the Board shall be
20 independent of the Secretary and the other offices
21 and officers of the Department. The Secretary shall,
22 by written delegation of authority, authorize the
23 Board to award grants and contracts, and otherwise
24 operate, to the maximum extent practicable, inde-
25 pendent of the Department."

1 (d) Not later than 30 days after the date of enact-
2 ment of this Act, the Secretary of Education, in consulta-
3 tion with the Speaker and Minority Leader of the House
4 of Representatives, and the Majority Leader and Minority
5 Leader of the Senate, shall appoint individuals to fill va-
6 cancies on the National Assessment Governing Board
7 caused by the expiration of the terms of members of the
8 Board, or the creation of new membership positions on
9 the Board pursuant to amendments made by this Act.

10 (e) In the event that an authorization permitting the
11 administration of a voluntary national test is enacted, the
12 test shall be administered in accordance with the following
13 provisions:

14 (1) The Federal Government may not require
15 any State or local educational agency to administer
16 or implement national tests.

17 (2) No State, local educational agency, or
18 school shall report, or be required to report, the
19 scores of individual students on any national tests to
20 any officer or employee of the Federal Government.

21 (3) No State, local educational agency, or
22 school may use national tests for student promotion,
23 tracking, or graduation.

24 (4) No State or local educational agency may
25 require any private or parochial school student, or

1 home-schooled individual, to take any test developed
2 under this Act without the written consent of the
3 parents or legal guardians of the student or individ-
4 ual.

5 (5) Nothing in this Act shall be construed to
6 mandate, direct, or require a State, local educational
7 agency, or school to change its curriculum, program
8 of instruction, or allocation of State or local re-
9 sources as a condition of participating in the na-
10 tional testing program under this Act.

DRAFT

CONFERENCE PROPOSAL FOR 2264 (Labor, HHS)

1 SEC. 524: (a) Notwithstanding any other provision
2 of law, the Office of Educational Research and Improve-
3 ment shall submit to the Committee on Appropriations of
4 the House of Representatives and the Senate a spending
5 plan for activities funded under this title under the head-
6 ing "EDUCATION RESEARCH, STATISTICS, AND IMPROVE-
7 MENT", prior to the obligation of the funds.

8 (b)(1) Notwithstanding any other provision of law,
9 the National Assessment Governing Board established
10 under section 412 of the National Education Statistics Act
11 of 1994 (20 U.S.C. 9011) (hereafter in this section re-
12 ferred to as the "Board") shall hereafter have exclusive
13 authority over all policies, direction, and guidelines for es-
14 tablishing and implementing voluntary national tests for
15 4th grade English reading and 8th grade mathematics:
16 *Provided*, That the tests shall be made available to a State,
17 local educational agency, or private or parochial school,
18 upon the request of the State, agency, or school, and the
19 use of the tests shall not be a condition for receiving any
20 Federal funds: *Provided further*, That within 90 days after
21 the date of enactment of this Act, the Board shall review
22 the national test development contract in effect on the
23 date of enactment of this Act, and modify the contract
24 as the Board determines necessary: *Provided further*, That

1 if the contract cannot be modified to the extent deter-
2 mined necessary by the Board, the contract shall be termi-
3 nated and the Board shall negotiate a new contract, under
4 the Board's exclusive control, for the tests.

5 (2) In exercising the Board's responsibilities under
6 paragraph (1) regarding the national tests, and notwith-
7 standing any action undertaken by the Department of
8 Education or a person contracting with or providing serv-
9 ices for the Department regarding the planning, or the
10 development of specifications, for the tests, the Board
11 shall—

12 (A) ensure that the content and standards for
13 the tests are the same as the content and standards
14 for the National Assessment;

15 (B) exercise exclusive authority over any expert
16 panel or advisory committee that will be or is estab-
17 lished with respect to the tests;

18 (C) ensure that the tests are linked to the Na-
19 tional Assessment to the maximum degree possible;

20 (D) develop test objectives, test specifications,
21 and test methodology;

22 (E) develop policies for test administration, in-
23 cluding guidelines for inclusion of, and accommoda-
24 tions for, students with disabilities and students
25 with limited English proficiency;

1 (F) develop policies for reporting test results,
2 including the use of standards or performance levels,
3 and for test use;

4 (G) have final authority over the appropriate-
5 ness of all test items;

6 (H) ensure that all items selected for use on the
7 tests are free from racial, cultural, or gender bias;
8 and

9 (I) take such actions and make such policies as
10 the Board determines necessary.

11 (3) No voluntary national tests for 4th grade reading
12 and 8th grade mathematics shall be implemented or ad-
13 ministered until the end of the 60-day period following the
14 development and field-testing of such tests, during which
15 period the National Assessment Governing Board shall
16 hold public hearings at which interested parties may com-
17 ment on the testing program.

18 (c) The Federal Government may not require any
19 State or local educational agency to administer or imple-
20 ment national tests for 4th grade reading and 8th grade
21 mathematics.

22 (d) No State, local educational agency, or school shall
23 report, or be required to report, the scores of individual
24 students on any tests described in this section to any offi-
25 cer or employee of the Federal Government.

1 (e) No State, local educational agency, or school may
2 use national tests for 4th grade reading and 8th grade
3 mathematics for student promotion, tracking, graduation,
4 or any other purpose unless such tests have been properly
5 validated for such purpose.

6 (f) No State or local educational agency may require
7 any private or parochial school student, or home-schooled
8 individual, to take any test developed under this section
9 without the written consent of the parents or legal guard-
10 ians of the student or individual.

11 (g) The National Academy of Sciences shall, not later
12 than September 30, 1998, submit a report to the Board,
13 the Secretary of Education, and Congress that—

14 (1) evaluates—

15 (A) the technical quality of the national
16 tests for 4th grade reading and 8th grade
17 mathematics;

18 (B) the validity, reliability, and adequacy
19 of the administration of the field tests;

20 (C) the validity of the design for linking
21 test results to student performance; and

22 (D) the degree to which the tests will pro-
23 vide valid and useful information to the public;
24 and

1 (2) recommends appropriate safeguards to en-
2 sure that such tests are not used—

3 (A) in a discriminatory manner; and

4 (B) for any purpose, including student pro-
5 motion, tracking, or graduation, unless such
6 tests have been properly validated for such pur-
7 pose.

8 (h) Nothing in this section is, or shall be construed
9 to mandate, direct, or require a State, local educational
10 agency, or school to change its curriculum, program of in-
11 struction, or allocation of State or local resources as a con-
12 dition of participating in the national testing program
13 under this section.

14 (i) Section 412 of the National Education Statistics
15 Act of 1994 (20 U.S.C. 9011) is amended—

16 (1) in subsection (b)(1)—

17 (A) by amending subparagraph (A) to read
18 as follows:

19 “(A) three Governors, or former Gov-
20 ernors, of whom not more than 1 shall be a
21 member of the same political party as the
22 President;”;

23 (B) by amending subparagraph (B) to read
24 as follows:

1 “(B) two State legislators, of whom not
2 more than 1 shall be a member of the same po-
3 litical party as the President;”;

4 (C) in subparagraph (II), by striking “one
5 representative” and inserting “three representa-
6 tives”;

7 (D) by amending subparagraph (I) to read
8 as follows:

9 “(I) two mayors, of whom not more than
10 1 shall be a member of the same political party
11 as the President;”;

12 (E) by striking subparagraph (J); and

13 (F) by redesignating subparagraphs (K),
14 (L), and (M) as subparagraphs (J), (K), and
15 (L), respectively;

16 (2) in subsection (c)—

17 (A) in paragraph (1), by striking “and
18 may not exceed a period of 3” and inserting
19 “and shall be for periods of 4”; and

20 (B) in paragraph (2), by inserting “con-
21 secutive” after “two”;

22 (3) by amending subsection (d) to read as fol-
23 lows:

24 “(d) VACANCIES.—As vacancies on the Board occur,
25 new members of the Board shall be appointed by the Sec-

1 retary from among individuals who are nominated by the
2 Board after consultation with representatives of the indi-
3 viduals described in subsection (b)(1). For each vacancy,
4 the Board shall nominate at least 3 individuals who are
5 qualified by experience or training to fill the particular
6 Board vacancy.”; and

7 (4) in subsection (c) by adding at the end the
8 following:

9 “(7) INDEPENDENCE.—In the exercise of its
10 functions, powers, and duties, the Board shall be
11 independent of the Secretary and the other offices
12 and officers of the Department. The Secretary shall,
13 by written delegation of authority, authorize the
14 Board to award grants and contracts, and otherwise
15 operate, to the maximum extent practicable, inde-
16 pendent of the Department.”.

17 (j) Not later than 30 days after the date of enactment
18 of this Act, the Secretary of Education, in consultation
19 with the Speaker and Minority Leader of the House of
20 Representatives, and the Majority Leader and Minority
21 Leader of the Senate, shall appoint individuals to fill va-
22 cancies on the National Assessment Governing Board
23 caused by the expiration of the terms of members of the
24 Board, or the creation of new membership positions on
25 the Board pursuant to amendments made by this Act.

1 SEC. 525. Notwithstanding any other provision of
2 this Act, none of the funds appropriated in this ^{or} any
3 other ^{Act} shall be used to implement or administer any
4 national testing program in 4th grade reading or 8th
5 grade mathematics, unless specifically authorized ^{in stat-}
6 ^{ute,} *Provided*, That funds may be used for development
7 and field-testing activities that precede the implementa-
8 tion or administration of such tests or to carry out the
9 National Assessment of Educational Progress or the Third
10 International Math and Science Study (TIMSS).

Section 524. (a) Notwithstanding any other provision of Federal law, no funds provided to the Department of Education or to an applicable program (as defined in section 400(c)(1) of the General Education Provisions Act (20 USC 1221(c)(1))), in this Act or in any other Act in fiscal year 1998, may be used to field test, pilot test, implement, administer or distribute in any way, any national tests.

(b) **Exception.**--- Subsection (a) shall not apply to the Third International Math and Science Study or the National Assessment of Educational Progress.

Section 525. (a) **Study.**---The National Academy of Sciences, in consultation with the National Governor's Association, the National Conference of State Legislatures, the White House, the National Assessment Governing Board, and the Congress, shall, conduct a feasibility study to determine if an equivalency scale can be developed that would allow test scores from commercially available standardized tests and State assessments to be compared with each other and the National Assessment of Educational Progress.

(b) **Report of Findings to Congress.** (1) The National Academy of Sciences shall submit a written report to the White House, the Committee on Education and the Workforce in the House of Representatives, and the Committee on Labor and Human Resources in the Senate not later than September 1, 1998.

(2) The National Academy of Sciences shall submit an interim report no later than June 15, 1998.

Section 526. National Assessment Governing Board. Notwithstanding any other provision of law, the exclusive authority over all policies, direction, and guidelines for developing voluntary national tests pursuant to contract RJ97153001 previously entered into between the United States Department of Education and the American Institutes for Research and executed on August 15, 1997, shall be vested in the National Assessment Governing Board established under section 412 of the National Education Statistics Act of 1994 (20 USC 9011); *Provided*, That within 90 days after the date of enactment of this Act, the Board shall review the national test development contract in effect on the date of enactment of this Act, and modify the contract as the Board determines necessary and not inconsistent with this Act or applicable laws: *Provided further*, That if the contract cannot be modified to the extent determined necessary by the Board, the contract shall be terminated and the Board shall negotiate a new contract, under the Board's exclusive control, for the tests, not inconsistent with this Act or applicable laws.

Section 527. Study. The National Academy of Sciences shall, not later than September 1, 1998, submit a written report to the Committee on Education and the Workforce in the House of Representatives, the Committee on Labor and Human Resources in the Senate, and the Committees on Appropriations in the House and Senate that evaluates all test items developed or funded by the Department of Education or any other agency of the Federal government pursuant to contract RJ97153001, any

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subsequent contract related thereto, or any contract modification by the National Assessment Governing Board pursuant to section 526 of this Act, for---

- (A) the technical quality of any test items for 4th grade reading and 8th grade mathematics;
- (B) the validity, reliability, and adequacy of developed test items;
- (C) the validity of any developed design which links test results to student performance;
- (D) the degree to which any developed test items provide valid and useful information to the public;
- (E) whether the test items are free from racial, cultural, or gender bias;
- (F) whether the test items address the needs of disadvantaged, limited English proficient and disabled students; and,
- (G) whether the test items can be used for tracking, graduation or promotion of students.

Section 528. (a) The Federal Government shall not require any State or local educational agency or school to administer or implement any pilot or field test in any subject or grade, nor shall the Federal government require any student to take any national test in any subject or grade.

(b) Nothing in section 528(a) shall be construed as affecting the National Assessment of Educational Progress or the Third International Math and Science Study.

Section 529. No Federal, State or local educational agency may require any private or parochial school student, or home-schooled individual, to take any pilot or field test developed under this Act, contract RJ97153001, or any contract related thereto, without the written consent of the parents or legal guardians of the student or individual.

Draft Managers Report National Testing

Managers and the Administration agree that it is important to have high, voluntary standards in the basic skills of reading and math, to measure whether students are meeting these standards, and to provide that information to students, parents and teachers. The Administration has proposed voluntary national tests in order to measure student achievement related to national standards. However, every state already administers a number of tests, and many are concerned that an additional, national, test would be an unnecessary burden and interfere with local schools.

To address this concern, the National Academy of Sciences will be commissioned to conduct a study of the feasibility of equating existing state and commercially available tests with each other and with the National Assessment of Educational Progress. The purpose of this study is to determine whether it will be possible to use existing tests administered by states and local school districts to compare individual student performance with existing, challenging national content and performance standards. The purpose is also to determine if the same tests can be used to compare the performance of students in different states and communities, on different tests, to each other. The NAS shall submit a report on this study to the Congress no later than June 15, 1997, and a final report no later than September 1, 1997.

The NAS will conduct this study in consultation with the National Governors' Association (NGA), the National Conference of State Legislatures (NCSL), NAGB, the Congress and the White House. While the NAS study is being conducted, NAGB will have exclusive authority over contract RJ97153001, as stated in this Act, which will be based on the same content and performance standards as are used for NAEP, and which are linked to NAEP to the maximum extent possible. However, no pilot testing of items for the national test may be conducted until September 1, 1997, the deadline for the NAS report.

The Administration and the authorizing Committees of the U.S. Congress will work together to incorporate the findings from the NAS study into the reauthorization of NAEP and NAGB. The Administration agrees that, where it is feasible and practical to validly and reliably equate test scores and link performance levels on State assessments and commercially available standardized tests with the National Assessment of Education Progress, then these tests may serve the same purpose as the proposed national test. To the extent that NAS study demonstrates ways in which existing tests can be equated with each other and with NAEP, or ways in which existing tests can be modified in order to facilitate such equating, the Administration and the House Committee on Education and the Workforce intend to work together to implement these recommendations through the reauthorization of NAEP.

In order to evaluate the work to develop national tests and to help inform future deliberations, the NAS is also directed to develop recommendations to prevent the misuse of tests, particularly for minority students. In particular, NAS is to recommend appropriate safeguards to ensure that tests are not used in a discriminatory manner or for tracking students or other "high stakes" purposes. It is also directed to recommend ways to ensure that such tests adequately assess students' reading comprehension and mathematics skills in a form most likely to yield accurate information.

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION AND THE WORKFORCE

2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515

FACSIMILE TRANSMISSION

SENT TO: White House

ATTENTION: Allison - for Mike Cohen

DATE: 11/7 **FAX #** 456-5581

NUMBER OF PAGES (including this cover sheet) 13

FROM:

Vic Klatt X

Sally Lovejoy _____

Tammy Hughes X

COMMENTS

If there are problems with this transmission, please call (202) 225-4527

Conference Agreement on National Testing Prohibition

Summary

November 7, 1997

Stops National Testing in FY 1998.

- No federal funds may be used to field test, pilot test, implement, administer or distribute in any way, any national tests in FY 1998.

No Required Testing of Individuals or Mandated Participation of Private Schools, Home Schools or Parochial Schools.

- No student is *required* to take any national test in any subject or grade.
- No federal, state or local educational agency may require any private or parochial school student, or home-schooled individual, to take any pilot or field test without the written consent of the parents or legal guardians of the student or individual.

National Academy of Sciences (NAS) Studies.

- NAS will conduct three studies and submit written reports to Congress and the White House on its findings.
- The first NAS study will determine whether an equivalency scale can be developed that would allow test scores from commercially available standardized tests, state assessments and the National Assessment of Educational Progress, to be compared with one another.
- The second NAS study will evaluate the technical quality, validity, reliability, design, and racial, cultural, or gender bias of test items already developed by the Department of Education.
- The third NAS study will recommend appropriate safeguards to ensure that tests are not used in a discriminatory or inappropriate manner.

Test Development Contract Moved Out of Department of Education.

- The test development contract previously entered into by the Department of Education will be transferred to the National Assessment Governing Board (NAGB).

Congress' Involvement in Testing.

- The House Committee on Education and the Workforce will hold reauthorization hearings on NAEP and NAGB in the spring of 1998, and the President will have an opportunity to have his testing proposal fully debated at that time. Congress will have the opportunity to work its will through the normal legislative process.

Draft

Agreement on National Testing Prohibition

Summary

November 7, 1997

Stops National Testing in FY 1998.

- No federal funds may be used to field test, pilot test, implement, administer or distribute in any way, any national tests in FY 1998. The only exceptions are the Third International Math and Science Study and the National Assessment of Educational Progress.

No Required Testing of Individuals or Mandated Participation of Private Schools, Home Schools or Parochial Schools.

- No student is *required* to take any national test in any subject or grade.
- No federal, state or local educational agency may require any private or parochial school student, or home-schooled individual, to take any pilot or field test without the written consent of the parents or legal guardians of the student or individual.

National Academy of Sciences (NAS) Studies

- NAS will conduct three studies and submit written reports to Congress and the White House on its findings.
- The first NAS study will determine whether an equivalency scale can be developed that would allow test scores from commercially available standardized tests, state assessments and the National Assessment of Educational Progress, to be compared with one another.
- The second NAS study will evaluate the technical quality, validity, reliability, design, and racial, cultural, or gender bias of test items already developed by the Department of Education.
- The third NAS study will recommend appropriate safeguards to ensure that tests are not used in a discriminatory or inappropriate manner.

Test Development Contract Moved Out of Department of Education.

- The test development contract previously entered into by the Department of Education will be transferred to the National Assessment Governing Board (NAGB).

Congress' Involvement in Testing.

- The House Committee on Education and the Workforce will hold reauthorization hearings on NAEP and NAGB in the spring of 1998, and the President will have an opportunity to have his testing proposal fully debated at that time. Congress will have the opportunity to work its will through the normal legislative process.

November 7, 1997, 1:40 p.m.

Section 305. (a) Notwithstanding any other provision of Federal law, no funds provided to the Department of Education or to an applicable program (as defined in section 400(c)(1) of the General Education Provisions Act (20 USC 1221(c)(1))), in this Act or in any other Act in fiscal year 1998, may be used to field test, pilot test, implement, administer or distribute in any way, any national tests.

(b) Exception.--- Subsection (a) shall not apply to the Third International Math and Science Study or the National Assessment of Educational Progress.

Section 306. (a) Study---The National Academy of Sciences, in consultation with the National Governors Association, the National Conference of State Legislatures, the White House, the National Assessment Governing Board, and the Congress, shall conduct a feasibility study to determine if an equivalency scale can be developed that would allow test scores from commercially available standardized tests and State assessments to be compared with each other and the National Assessment of Educational Progress.

(b) Report of Findings to Congress. (1) The National Academy of Sciences shall submit a written report to the White House, the Committee on Education and the Workforce in the House of Representatives, the Committee on Labor and Human Resources in the Senate, and the Committees on Appropriations of the House of Representatives and the Senate not later than September 1, 1998.

(2) The National Academy of Sciences shall submit an interim report no later than June 15, 1998.

Section 307 (a). National Assessment Governing Board. Notwithstanding any other provision of law, the exclusive authority over all policies, direction, and guidelines for developing voluntary national tests pursuant to contract RJ97153001 previously entered into between the United States Department of Education and the American Institutes for Research and executed on August 15, 1997, shall be vested in the National Assessment Governing Board established under section 412 of the National Education Statistics Act of 1994 (20 USC 9011); *Provided*, That within 90 days after the date of enactment of this Act, the Board shall review the national test development contract in effect on the date of enactment of this Act, and modify the contract as the Board determines necessary and not inconsistent with this Act or applicable laws: *Provided further*, That if the contract cannot be modified to the extent determined necessary by the Board, the contract shall be terminated and the Board shall negotiate a new contract, under the Board's exclusive control, for the tests, not inconsistent with this Act or applicable laws.

(b) In carrying out its exclusive authority for developing voluntary national tests pursuant to contract RJ97153001, any subsequent contract related thereto, or any contract modification pursuant to subsection (a), the National Assessment Governing Board shall determine---

(1) the extent to which test items selected for use on the tests are free from racial, cultural or gender bias;

(2) whether the test development process and test items adequately assess student reading and mathematics comprehension in the form most

likely to yield accurate information regarding student achievement in reading and mathematics;

(3) whether the test development process and test items take into account the needs of disadvantaged, limited English proficient and disabled students; and

(4) whether the test development process takes into account how parents, guardians, and students will appropriately be informed about testing content, purpose and uses.

Section 308. Study. The National Academy of Sciences shall, not later than September 1, 1998, submit a written report to the Committee on Education and the Workforce in the House of Representatives, the Committee on Labor and Human Resources in the Senate, and the Committees on Appropriations in the House and Senate that evaluates all test items developed or funded by the Department of Education or any other agency of the Federal government pursuant to contract RJ97153001, any subsequent contract related thereto, or any contract modification by the National Assessment Governing Board pursuant to section 307 of this Act, for---

(A) the technical quality of any test items for 4th grade reading and 8th grade mathematics;

(B) the validity, reliability, and adequacy of developed test items;

(C) the validity of any developed design which links test results to student performance;

- (D) the degree to which any developed test items provide valid and useful information to the public;
- (E) whether the test items are free from racial, cultural, or gender bias;
- (F) whether the test items address the needs of disadvantaged, limited English proficient and disabled students; and,
- (G) whether the test items can be used for tracking, graduation or promotion of students.

Section 309(a). Study—The National Academy of Sciences shall conduct a study and make written recommendations on appropriate methods, practices, and safeguards to ensure that ---

- (1) existing and new tests that are used to assess student performance are not used in a discriminatory manner or inappropriately for student promotion, tracking or graduation; and
- (2) existing and new tests adequately assess student reading and mathematics comprehension in the form most likely to yield accurate information regarding student achievement of reading and mathematics skills.

(b) Report to Congress. The National Academy of Sciences shall submit a written report to the White House, the National Assessment Governing Board, the Committee on Education and the Workforce in the House of Representatives, the Committee on Labor and Human Resources in the Senate, and the Committees on Appropriations in the House and Senate not later than September 1, 1998.

Section 310. (a) The Federal Government shall not require any State or local educational agency or school to administer or implement any pilot or field test in any subject or grade, nor shall the Federal government require any student to take any national test in any subject or grade.

(b) Nothing in section 309(a) shall be construed as affecting the National Assessment of Educational Progress or the Third International Math and Science Study.

Section 311. No Federal, State or local educational agency may require any private or parochial school student, or home-schooled individual, to take any pilot or field test developed under this Act, contract RJ97153001, or any contract related thereto, without the written consent of the parents or legal guardians of the student or individual.

PROHIBITION ON VOLUNTARY NATIONAL TESTING

The House bill contained a prohibition on the use of federal funds for the development, planning or administration of any national program for testing in reading or mathematics. The provision exempts the National Assessment of Educational Progress and the Third International Math and Science Study.

The House bill also contained a provision prohibiting the administration of any national tests in 4th grade reading and 8th grade mathematics until the submission of a final report by the National Academy of Sciences.

The Senate bill contained several provisions. The first required the Office of Educational Research and Improvement to submit to the Senate Appropriations Committee a spending plan for activities under the Education Research, Statistics, and Improvement account prior to obligation.

The second gives the National Assessment Governing Board exclusive authority over the policies, direction and guidelines for implementing voluntary national tests for 4th grade reading and 8th grade mathematics. The provision also required that any such tests be voluntary and that within 90 days of enactment the Board shall review the contract for the national tests and, if necessary, modify or terminate and renegotiate any contracts. The provision lists the specific authorities of the board.

The third provision also expressly prohibited any State or local educational agency from requiring any private, parochial school student or home-schooled student to take any national test without the written consent of the student.

The fourth provision of the Senate bill changed the composition of the National Assessment Governing Board to add one governor, two mayors, and two business representatives and make technical changes to the make-up and process for appointment to the Board.

The conferees and the Administration agree that it is important to have high, voluntary standards in the basic skills of reading and math, to measure whether students are meeting these standards, and to provide that information to students, parents and teachers. The Administration has proposed voluntary national tests in order to measure student achievement related to national standards. However, every state already administers a number of tests, and many are concerned that an additional, national, test would be an unnecessary burden.

To address this concern, the conference agreement (sec. 305-311) states that the National Academy of Sciences will be commissioned to conduct a study of the feasibility of equating existing state and commercially available tests with each other and with the National Assessment of Educational Progress. The purpose of this study is to determine whether it will be possible to use existing tests administered by states and local school districts to compare individual student performance with existing, challenging national content and performance standards. The purpose is also to determine if the same tests can be used to compare the performance of students in different states and communities, on different tests, to each other. The NAS shall submit a report on this study to the Congress no later than June 15, 1998, and a final report no later than September 1, 1998.

The NAS will conduct this study in consultation with the National Governors' Association (NGA), the National Conference of State Legislatures (NCSL), NAGB, the Congress and the White House. While the NAS study is being conducted, NAGB will have exclusive authority over contract RJ97153001, as stated in this Act, which will be based on the same content and performance standards as are used for NAEP, and which are linked to NAEP to the maximum extent possible.

The conference agreement further provides that the National Academy of Sciences shall submit a written report by September 1, 1998 to the Committee on Education and Workforce in the House of Representatives, the Committee on Labor and Human Resources in the Senate, and the House and Senate Appropriations Committees that evaluates the technical quality, validity and reliability of developed test items on national 4th grade reading and 8th grade mathematics tests; evaluates whether test items are free from racial, cultural or gender bias; evaluates whether the test items address the needs of disadvantaged, limited English proficient and disabled students; and evaluates whether the test items can be used for tracking, graduation or promotion of students.

The conferees intend that the National Assessment Governing Board shall hold public hearings on these test development activities and on the recommendations submitted by the National Academy of Sciences. The National Assessment Governing Board shall ensure that such hearings are widely publicized, and that activities conducted to publicize such hearings communicate effectively with the broad and diverse populations that may be affected by such tests.

The Administration and the authorizing Committees of the U.S. Congress will work together to incorporate the findings from the NAS study into the reauthorization of NAEP and NAGB. The conferees understand that the Administration agrees that, where it is feasible and practical to validly and reliably equate test scores and link performance levels on State assessments and commercially available standardized tests with the National Assessment of Education Progress, then these tests may serve the same purpose as the proposed national test. To the extent that NAS study demonstrates ways in which existing tests can be equated with each other and with NAEP, or ways in which existing tests can be modified in order to facilitate such equating, the Administration and the House Committee on Education and the Workforce intend to work together to implement these recommendations through the reauthorization of NAEP.

In order to inform future deliberations on the appropriate uses of tests measuring student academic performance and to prevent the misuse of such tests, particularly for minority and limited English proficient students, the conference agreement provides for a third study to be conducted by the National Academy of Sciences that makes recommendations on appropriate methods, practices, and safeguards to ensure that existing and new tests that may be used to measure student performance are not used in a discriminatory manner or inappropriately for tracking or other "high stakes" purposes. The NAS is also directed to report on ways to ensure that such tests adequately assess student reading and mathematics comprehension in the form most likely to yield accurate information regarding student achievement in reading and mathematics. The conference agreement provides that this NAS report shall be submitted to the White House, National Assessment Governing Board, the Committee on Education and the Workforce in the

House of Representatives and the Committee on Labor and Human Services in the Senate, and the Committees on Appropriations in the House of Representatives and Senate not later than September 1, 1998.

The conferees encourage the National Assessment Governing Board and the National Academy of Sciences, in convening any advisory committees or expert panels needed to carry out the requirements of this Act, to take into account racial, ethnic and gender diversity and balance.

The conference agreement further provides that the federal government shall not require any state, local educational agency or school district to administer or implement any pilot or field test in any subject or grade, or require any student to take any national test in any subject or grade. In addition, no federal, state or local educational agency may require any private or parochial school student, or home-schooled student, to take any pilot or field test developed under this Act without the written consent of the parents or legal guardians.

The Conferees understand that the Administration will submit legislation for a revised school facilities initiative.



COMMITTEE ON APPROPRIATIONS
MINORITY STAFF
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FAX COVER SHEET

TO: MIKE COHEN

FAX #: 456-5581

FROM: CHERYL SMITH

DATE: 10/31

PAGES (including cover): 4

Comments:

TO: The Speaker
The Majority Leader
The Majority Whip
The Chairman of the Republican Conference
The Chairman of the Committee on Appropriations
The Chairman of the Appropriations Labor/HHS/Education Subcommittee
The Ranking Member of the Committee on Appropriations

FROM: Bill Goodling
Chairman, House Committee on Education and the Workforce

SUBJECT: Compromise Testing Language

Attached please find a draft of compromise language to resolve the testing issue in the Labor/HHS Appropriations Conference. As you know, this is the fourth compromise proposal I have offered to resolve this matter: the first being the language passed by the full House; the second was the language proposing a NAS study of the comparability of existing tests offered last week (and agreed to last week by House and Senate Republican Conferences last week); the third was a modified proposal offered last night; and, now I offer this in the spirit of continuing to find a resolution to this difficult issue. I believe this latest offer represents the best opportunity to find a consensus on this issue, while retaining the original intent of the House language.

Please feel free to call me if you have any further questions or comments.

Goodling Proposal #4
October 31, 1997, 1:00 p.m.

Section 1. (a) Notwithstanding any other provision of Federal law, funds provided to the Department of Education or to an applicable program (as defined in section 400(c)(1) of the General Education Provisions Act (20 USC 1221(c)(1))), shall not be used to develop, implement, administer, field test, pilot test, or distribute in any way, any national tests that are not specifically and explicitly provided for in current or future authorizing legislation enacted into law.

(b) Exception.--- Subsection (a) shall not apply to the Third International Math and Science Study.

Section 2. (a) Study.---The National Academy of Sciences, in consultation with the National Governor's Association and the National Conference of State Legislatures, shall conduct a feasibility study to determine if an equivalency scale can be developed that would allow test scores from commercially available standardized tests and State assessments to be compared.

(b) Report of Findings to Congress. The National Academy of Sciences shall report its findings to the Committee on Education and the Workforce in the House of Representatives and the Committee on Labor and Human Resources in the Senate not later than March 31, 1998.

Section 3 (a) Study. The National Academy of Sciences shall, not later than September 30, 1998, submit a report to the Board, the Secretary of Education, the Committee on Education and the Workforce in the House of Representatives, the

Committee on Labor and Human Resources in the Senate, and the Committees on Appropriations in the House and Senate that---

(1) evaluates---

(A) the technical quality of the national tests for 4th grade reading and 8th grade mathematics;

(B) the validity, reliability, and adequacy of developed tests;

(C) the validity of the design for linking test results to student performance; and

(D) the degree to which the tests will provide valid and useful information to the public;

(E) the test items in the developed tests to determine whether the tests are free from racial, cultural, or gender bias; and

(2) recommends appropriate safeguards to ensure that such tests are not used in a discriminatory manner, and recommends safeguards to ensure that such tests shall not be used for tracking of students.

Section 4. (a) The Federal Government shall not require any State or local educational agency or school to administer or implement any national test in any subject or grade, nor shall the Federal government require any student to take any national test in any subject or grade.

(b) Nothing in section 4(a) shall be construed as affecting the National Assessment of Educational Progress or the Third International Math and Science Study.