

NLWJC - Kagan

DPC - Box 004 - Folder 006

**Budget Materials - Appropriations
Riders 1999: Education [2]**

THE WHITE HOUSE
WASHINGTON

October 12, 1998

MEMORANDUM FOR ERSKINE BOWLES

FROM: Bruce Reed

SUBJECT: Goals 2000 Compromise

Attached is language amending the Goals 2000 Act, which we could offer in place of the Republicans' proposal to absorb Goals 2000 into the Title VI block grant. The language retains Goals 2000 as a separate program (with its basic structure and accountability requirements intact), but permits states and school districts to use Goals funds for the full range of purposes that Title VI allows.

We should not agree to this language easily: although we do not think it actually undermines the program very much, Republicans will claim that they have gutted one of the President's signature education initiatives. But if you need to make a concession that will enable them to make such a claim, we are better off giving them this than retreating any further on national testing.

**AUTHORIZING STATES AND LOCAL EDUCATIONAL AGENCIES TO USE GOALS
2000 FUNDS FOR TITLE VI PURPOSES**

_____. Title III of The Goals 2000: Educate America Act is amended as follows:

“(a) At the end of section 308(b)(2) [relating to State Use of Funds], add:

(N) supporting technology related to the implementation of school based reform programs, including professional development to assist teachers and other school officials regarding how to use effectively such equipment and software;

(O) supporting programs for the acquisition and use of instructional and educational materials, including library services and materials (including media materials), assessments, reference materials, computer software and hardware for instructional use, and other curricular materials which are tied to high academic standards and which will be used to improve student achievement and which are part of an overall education reform program;

(P) supporting promising education reform projects including effective schools and magnet schools;

(Q) supporting programs to improve the higher order thinking skills of disadvantaged elementary and secondary school students and to prevent students from dropping out of school;

(R) supporting programs to combat illiteracy in the student and adult population, including parent illiteracy;

(S) supporting programs that provide for the educational needs of gifted and talented children;

(T) supporting school improvement programs or activities under section 1116 and 1117 of Title I of the Elementary and Secondary Education Act of 1965.

“(b) section 309(a)(6)(A)(ii) [relating to authorized State and Local activities] is amended to insert after “... use of technology-enhanced curricula and instruction,”: “and activities authorized under subparagraphs (N) through (T) of section 308(b)(2),”

This language ensures that States and local educational agencies have complete flexibility to use Goals 2000 funds to carry out activities authorized under Title VI of the Elementary and Secondary Education Act.

October 12, 1998

MEMORANDUM FOR ERSKINE BOWLES

FROM: Bruce Reed

SUBJECT: Negotiations on National Testing

We're getting nowhere with Goodling on national tests. We met with him Saturday, offered a compromise yesterday, and were told today that Goodling remains unwilling to budge from his demand for a ban on pilot testing of any sort. We offered to meet with Goodling again, but were told that Goodling met with Lott, Armey, and Gingrich today, and has their support for holding firm.

Our offer would have permitted NAGB to conduct pilot testing as planned, but also clarified that the type of testing Goodling indicated was of greatest concern to him--tests that would enable comparisons among school districts to be made--would not be allowable this year.

We are prepared to make additional concessions, which are outlined below. But none of these will be enough to satisfy Goodling unless he is told by the leadership that this is the best he can do.

The central issue is over pilot testing. Last year's provision allowed NAGB to continue test development but banned pilot testing in FY98. In order to keep the test on schedule for implementation in 2001, NAGB needs to be able to pilot test individual test items to see whether they work. Because students will be given only a sample of items, this pilot testing will not produce scores for individuals, schools, districts, or states. The pilot test will only involve about 20,000 students nationwide.

We could agree to ban any pilot testing that produces scores for individuals, schools, districts, or states (see Option 1 below). But an absolute ban on pilot testing, as Goodling continues to demand, would kill the test.

Attached are our fallback options for further negotiations. Each of them permits pilot testing to occur as planned.

Option 1 prohibits any testing this year that would enable individual scores or comparisons among school districts. It also includes an additional NAS study that

would examine the feasibility of including test items from NAEP into state or local tests, to determine if it will be possible for a state or school district to use its own test instead of the national test.

Option 2, to be offered in addition to Option 1, would require a state or school district to certify to NAGB that it has qualified teachers, an appropriate curriculum, and extra help for students and schools, before it can give the tests. This responds to Goodling's concerns that the test shouldn't be given until we know children can pass them. It will also appeal to the CBC.

Option 3 is as far as we can go. It would permit pilot testing as planned, but would not permit test implementation to occur unless specifically authorized by Congress. This would be a major concession to Goodling--and would force us to have a virtually unwinnable authorization fight next year.

One final relevant piece of information for your discussions with the Republican leadership: In Penn's polling on whether voters would support the President for vetoing over contentious riders, a veto over language that banned the national test was the most popular by far -- 60-32% among all voters, 57-39% among independents. In Penn's polling, the test is even more popular than the environment.

Prohibition on Testing Activity

Sec. _____. Notwithstanding any other provision of Federal law, funds provided to the Department of Education or to an applicable program may not be used to field test, implement or administer any federally sponsored national test in reading, mathematics, or any other subject, or to engage in pilot testing that would enable comparisons of test results among students, schools, school districts, or states: Provided, That the National Assessment Governing Board shall retain exclusive authority over the development of voluntary national tests as described in Section 307 of the Department of Education Appropriations Act, 1998.

AND/OR

NAS Study on Embedding NAEP Items in State and Local Tests

The National Academy of Sciences shall conduct a study of the technical feasibility of including items from the National Assessment of Educational Progress or other tests in state and district assessments to provide a measure of individual student performance against National Assessment of Educational Progress standards in 4th grade reading and 8th grade mathematics and the quality of the information about a student's performance that would be provided to parents and teachers. The National Academy of Sciences shall report the results of the study to Congress by June 1, 1999.

AND/OR

No State or Local Implementation Without Quality Assurance

No State or local educational agency receiving financial assistance from the Secretary of Education may participate in any national test in 4th grade reading or 8th grade mathematics that is supported by the Secretary and that measures individual student performance against standards of the National Assessment of Educational Progress unless the State or local educational agency, as the case may be, certifies to NAGB that it has developed, and has begun to carry out, a plan to--

- (1) ensure that teachers have the knowledge and skills they need to teach students to meet those standards;
- (2) provide all students with access to a challenging curriculum that can prepare them to meet those standards; and
- (3) provide additional assistance to students and schools that do not make progress toward meeting those standards.

Option 3 (in addition to Options 1 & 2)

No Implementation Without Authorization & NAGB Develops Plan for Test Implementation and Use

Sec. ____ Notwithstanding any other provisions of Federal law, funds provided to the Department of Education or to an applicable program may not be used to implement or administer any federally sponsored national test in reading, mathematics or any other subject that is not specifically and explicitly provided for in authorizing legislation enacted into law. The National Assessment Governing Board shall develop a plan for the continued development and implementation of national tests that measure individual student performance against National Assessment of Educational Progress standards in 4th grade reading and 8th grade mathematics. The plan shall include policies for the administration and use of national tests. In developing this plan, NAGB shall consider the feasibility of including items from the National Assessment of Educational Progress or other tests in state and district assessments to provide a measure of individual student performance against National Assessment of Educational Progress standards in 4th grade reading and 8th grade mathematics. NAGB shall present a written plan to the Committee on Education and Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the President for their consideration by ____ (prior to reauthorization of the National Assessment of Education Progress).

Could be used to sweeten any fallback option

Propose reducing the appropriations for test development from \$16 to \$8-10 million.
These funds have been requested in the Education Department's Fund for the Improvement of Education (FIE) account. (Keep 10 million if we do both NAS studies)

GENERAL REPORT LANGUAGE ON ENGLISH IMMERSION PROGRAMS

The Managers note that English Immersion can be a successful technique for helping a significant number of Limited English Proficient children learn English and acquire academic skills rapidly and efficiently. Other techniques have also been proven successful in certain settings. It is essential that schools choose the teaching technique that is likely to be most effective for the particular needs of the LEP children in their classrooms, including English immersion where appropriate.

STUDY OF EFFECTIVE LEP PRACTICES, INCLUDING ENGLISH IMMERSION

The Managers direct the Secretary to fund a study that identifies highly effective school practices, funded from any source, for helping LEP children learn English and acquire academic skills. In the conduct of this study, the Managers direct that the Secretary examine specifically the successful English immersion programs conducted by [Catholic Charities in Chicago and Seattle VERIFY], as well as successful examples of other teaching methods. The study is to be completed by June 30, 1999, and promptly transmitted to Congress to inform the debate on reauthorization of title VII of the Elementary and Secondary Education Act.

Detailed descriptions of the effective practices identified shall be disseminated by the Secretary to States and school districts as assistance to them in developing their own programs.

The study is to be carried out by a respected, non-partisan organization outside the Department of Education, such as the National Academy of Sciences.

STUDY OF SUCCESSFUL AND UNSUCCESSFUL LEP PRACTICES

The Managers direct the Secretary of Education to fund a study that will identify at least 10 highly successful projects, including English immersion projects, funded from any source, for helping Limited English Proficient children learn English and acquire academic skills, as well as at least 10 of the least successful such projects. The study should identify the features of each project that made it successful or unsuccessful. The study is to be completed by June 30, 1999, and promptly transmitted to Congress. The comparison of effective and ineffective practices will be helpful to the Congress during its consideration of reauthorization of Title VII of the Elementary and Secondary Education Act in the next Congress.

Detailed descriptions of both the effective and the ineffective practices identified shall be disseminated by the Secretary to States and school districts as assistance to them in developing their own programs.

The study is to be carried out by a respected, non-partisan organization outside the Department of Education, such as the National Academy of Sciences.

**LEGISLATIVE LANGUAGE TO LIFT THE 25% CAP ON USE OF BILINGUAL
ED FUNDS FOR IMMERSION PROGRAMS**

Sections 7116(I)(2) and (3) of Title VII of the Elementary and Secondary Education Act of 1965 are hereby repealed, and subsequent clauses of section 7116(I) renumbered accordingly.

Explanatory statement: Section 7116(I)(2) imposes a limitation of 25% of total Bilingual Education funds that the Secretary can grant for English immersion programs or other techniques other than those that provide for the development of bilingual proficiency in English and another language. Section 7116(I)(3) sets related conditions an applicant must satisfy for a grant for a program other than a program to develop bilingual proficiency, if the 25% cap has already been reached.

English immersion programs have been shown to be highly effective in helping some children learn English and acquire academic skills. School districts already have the flexibility to tailor programs for LEP children financed with their own funds in ways that best meet the needs of the children. They should have the same flexibility to use whatever teaching technique would be most effective, when designing programs with Federal funds. This provision eliminates the current restrictions on school districts for the use of Federal funds.

LEGISLATIVE LANGUAGE TO LIFT THE 25% CAP ON USE OF BILINGUAL ED FUNDS FOR IMMERSION PROGRAMS, AND ELIMINATE THE PRIORITY FOR PROGRAMS FOR BILINGUAL PROFICIENCY IN ENGLISH AND ANOTHER LANGUAGE

Sections 7116(I)(1), (2), and (3) of Title VII of the Elementary and Secondary Education Act of 1965 are hereby repealed, and subsequent clauses of section 7116(I) renumbered accordingly..

Explanatory statement: Section 7116(1) requires the Secretary to give priority to funding applications that “provide for the development of bilingual proficiency both in English and another language for all participating students.” Sections 7116(I)(2) imposes a limitation of 25% of total Bilingual Education funds that the Secretary can grant for English immersion programs or other techniques other than those that provide for the development of bilingual proficiency in English and another language. Section 7116(I)(3) sets related conditions an applicant must satisfy for a grant for a program other than a program to develop bilingual proficiency, if the 25% cap has already been reached.

English immersion programs have been shown to be highly effective in helping some children learn English and acquire academic skills. School districts already have the flexibility to tailor programs for LEP children financed with their own funds in ways that best meet the needs of the children. They should have the same flexibility to use whatever teaching technique would be most effective, when designing programs with Federal funds. This provision eliminates the current restrictions on school districts for the use of Federal funds.

10/11/98 SUN 15:28 FAX

SEC.----. Part A of Title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7401, et seq.) is amended—

(1) in section 7116(i), by striking out paragraphs (2) and (3) and redesignating paragraphs (4) and (5) as paragraphs (2) and (3), respectively; and
 (2) in Subpart 2, by adding at the end thereof a new section 7137 to read as follows:

"SEC. 7137. SPECIAL REPORT. (a) In General. (1) The Secretary shall submit to the President and the Congress by January 31, 2000 a report that—

"(A) identifies effective, research-based, Structured English as a Second Language Programs, Transitional Bilingual Education Programs, and Two-way Bilingual Education Programs that result in limited English proficient students in high poverty schools attaining proficiency in English and high levels of academic achievement; and

"(B) identifies and analyzes the characteristics and components of such programs, including—

"(i) the characteristics of the schools and students who benefit most from such programs;

"(ii) their instructional strategies for teaching English and academic subjects;

"(iii) their languages of instruction;

"(iv) their programs for professional development;

"(v) the relationship of such programs to the overall school program, and how such programs are coordinated;

"(vi) how student progress is assessed;

"(vii) how program effectiveness is evaluated; and

"(viii) how such programs help limited English proficient students prepare for, and meet, local and State academic standards.

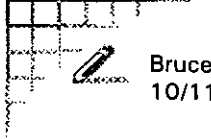
"(2) The Secretary shall carry out such research and data collection activities as are necessary to prepare the report described in paragraph (1) with funds available to carry out section 7152.

"(b) Definitions. As used in this section, the following terms shall have the indicated meanings:

"(1) A Structured English as a Second Language Program means a program in which limited English proficient students receive special instruction in English, using second-language teaching methods and adjustments to ensure that instruction in other subject matter is comprehensible. The goal of such a program is to assist students to make the transition into mainstream English classes.

"(2) A Transitional Bilingual Education Program means a program in which limited English proficient students receive their instruction through their native language and English as a second language teaching methods. The goal of such a program is to assist students to make the transition into mainstream English classes.

"(3) A Two-way Bilingual Education Program means a program in which limited English proficient students and students who do not have limited English proficiency receive instruction through the native language of the limited English proficient students and English in order to develop full proficiency in both languages for both types of students."



Bruce N. Reed
10/11/98 02:57:53 PM

Record Type: Record

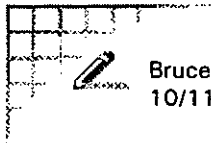
To: Michael Cohen/OPD/EOP

cc: Elena Kagan/OPD/EOP, Barbara Chow/OMB/EOP

Subject: Re: national test language/options


These look pretty good. But the more I think about it, the less I think we should be willing to go along with any kind of requirement for Congressional authorization. I think that gives away too much, and won't really satisfy Goodling about pilot testing anyway.

I like Option 5, about quality assurance. I wonder if you could require districts to report to Congress or to NAGB, not the Secy of Education. Also, what about prohibiting pilot testing, field testing, or implementation of the national test if the NAS certifies that a state test is available that can measure individual performance against NAEP standards?



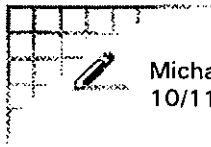
Bruce N. Reed
10/11/98 03:42:59 PM

Record Type: Record

To: Michael Cohen/OPD/EOP
cc: Elena Kagan/OPD/EOP
Subject: Re: new report language 

That looks better. I would not do the bracketed language.

In the study part, should you mention that NAS will study how long it will take for the significant teaching improvements enacted by this Congress to have an effect??? (and list some of Goodling's measures by name)



Michael Cohen
10/11/98 01:25:35 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Barbara Chow/OMB/EOP

cc:

Subject: national test language/options

Below is my best cut at language that reflects our conversations after the Goodling meeting. I've basically created 4 sets of areas in which we could possibly make concessions:

1. Restrictions on Pilot Testing This set is where we would love to end up. It includes a new provision that explicitly bans pilot tests that permit comparisons among districts. The others are options we previously developed, to restrict pilot testing or both pilot and field tests that provide individual scores.

2. Restrictions on Implementation This set includes big concessions, in two ways. The first agrees that we need specific authorization before implementation, and tells NAGB to develop an implementation plan in time for NAEP/NAGB reauthorization.

The second approach prohibits states or districts from participating in the tests unless the file a certification with the Secretary that they are addressing the quality issues Goodling keeps raising. I've tried to draft this with some flexibility, so that the states and cities that have already signed up could plausibly meet this requirement. This would be the first time we have agreed to attach any "string" to the test.

I will ask ED for some drafting assistance on these two first thing in the am.

3. National Academy Studies. A new study on teacher quality for Goodling, and the old one on embedding NAEP items for his staff.

4. Budget Cuts. We can live with half of what we requested--though we will need more than \$8 million if we are going to pay for the NAS studies.

I am trying to get a better handle on study costs; to be safe I'd save \$1 million for each.

I. RESTRICTIONS ON PILOT TESTING

1. Senate Language with ban on comparisons among districts.

Sec. 305. Notwithstanding any other provision of Federal law, funds provided to the Department of Education or to an applicable program may not be used to field test, implement or administer any federally sponsored national test in reading, mathematics, or any other subject, ~~nor may any funds be used to conduct pilot tests that allow for comparisons of test results among school districts:~~ Provided, That the National Assessment Governing Board

to engage in

testing activity that enables

shall retain exclusive authority over the development of voluntary national tests as described in Section 307 of the Department of Education Appropriations Act, 1998.

2. Restriction on Pilot Test With Individual Scores

Sec. ____ Notwithstanding any other provision of Federal law, no funds provided to the Department of Education or to an applicable program in this Act or in any other Act in fiscal year 1999 may be used for a pilot test that would yield individual student, school, school district, or state scores as part of the development of any federally sponsored voluntary national test in reading, mathematics, or any other subject, or to field test, implement or administer any such test; Provided, That the National Assessment Governing Board shall retain exclusive authority over the development of voluntary national tests as described in Section 307 of the Department of Education Appropriations Act, 1998.

3. Restriction on Pilot Test and Field Test With Individual Scores

Sec. ____ Notwithstanding any other provision of Federal law, no funds provided to the Department of Education or to an applicable program in this Act or in any other Act in fiscal year 1999 may be used for a pilot test or field test that would yield individual student, school, school district, or state scores as part of the development of any federally sponsored voluntary national test in reading, mathematics, or any other subject, or to implement or administer any such test; Provided, That the National Assessment Governing Board shall retain exclusive authority over the development of voluntary national tests as described in Section 307 of the Department of Education Appropriations Act, 1998.

II. RESTRICTIONS ON IMPLEMENTATION

4. No Implementation Without Authorization & NAGB Develops Plan for Test Implementation and Use

Sec. ____ Notwithstanding any other provisions of Federal law, funds provided to the Department of Education or to an applicable program may not be used to implement or administer any federally sponsored national test in reading, mathematics or any other subject that is not specifically and explicitly provided for in authorizing legislation enacted into law. The National Assessment Governing Board shall develop a plan for the continued development and implementation of national tests that measure individual student performance against National Assessment of Educational Progress standards in 4th grade reading and 8th grade mathematics. The plan shall include policies for the administration and use of national tests. In developing this plan, NAGB shall consider the feasibility of including items from the National Assessment of Educational Progress or other tests in state and district assessments to provide a measure of individual student performance against National Assessment of Educational Progress standards in 4th grade reading and 8th grade mathematics. NAGB shall present a written plan to the Committee on Education and Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the President for their consideration by ____ (prior to reauthorization of the National Assessment of Education Progress).

*u.b - no
pilot
w/ pilot
this year.*

5. No State or Local Implementation Without Quality Assurance

No state or local school district may participate in national tests unless it provides an assurance to the Secretary of Education that it has developed and is implementing a plan to (1) ensure that teachers have the knowledge and skills necessary to teach students to meet the NAEP standards; (2) provide all students with access to a challenging curriculum that can prepare them to meet the NAEP standards, (3) provide additional assistance to students and schools that do not make progress toward meeting the NAEP standards.

III. NATIONAL ACADEMY OF SCIENCES STUDIES

6. NAS Study on Embedding NAEP Items in State and Local Tests

The National Academy of Sciences shall conduct a study of the technical feasibility of including items from the National Assessment of Educational Progress or other tests in state and district assessments to provide a measure of individual student performance against National Assessment of Educational Progress standards in 4th grade reading and 8th grade mathematics and the quality of the information about a student's performance that would be provided to parents and teachers. The National Academy of Sciences shall report the results of the study to Congress by June 1, 1999.

7. NAS Study on Teacher Quality

The National Academy of Sciences shall conduct a study to identify the knowledge and skills teachers must have in order to effectively prepare students to meet national standards, and to identify the most effective approaches to teacher preparation and professional development to ensure that teachers possess the requisite knowledge and skills. The National Academy of Sciences shall report the results of the study to Congress by _____.

IV. BUDGET CUT

6. Propose reducing the appropriations for test development from \$16 to \$8 million.

These funds have been requested in the Education Department's Fund for the Improvement of Education (FIE) account.

Note that we will need more than \$8 million if we are to conduct the NAS studies (I don't know the cost of these studies yet, but I would save \$1 million each to be on the very safe side.



Other to a subject
activity
That will enable
conferences to be
drawn among school
districts
Study / reports
Testing

10896500

63

70300

3969

105300

Offer 1

Senate language, which prohibits us from field testing, administering, or implementing the test with FY 99 funds (but implicitly permits pilot testing) (see attached language)

Offer 2 (in addition to Senate language)

Propose a National Academy of Sciences study to examine the feasibility of including NAEP test items in state and commercial tests, to measure how well students measure up to national standards without having to administer a separate test (see attached language)

and

Propose reducing the appropriations for test development from \$16 million to \$8 million.

Offer 3 (in addition to Senate language, NAS study, and reduced appropriation)

Propose prohibiting us from using FY99 funds for pilot tests that would produce individual scores for students, schools, school districts, or states (see attached language)

OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General, as authorized by section 212 of the Department of Education Organization Act, \$31,242,000.

GENERAL PROVISIONS

SEC. 301. No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system.

SEC. 302. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. For the purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing or clus-

Lab/HHS/Ed Senate Committee Bill

tering. The prohibition described in this section does not include the establishment of magnet schools.

SEC. 303. No funds appropriated under this Act may be used to prevent the implementation of programs of voluntary prayer and meditation in the public schools.

(TRANSFER OF FUNDS)

SEC. 304. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act, as amended) which are appropriated for the Department of Education in this Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer. Provided, That the Appropriations Committees of both Houses of Congress are notified at least fifteen days in advance of any transfer.

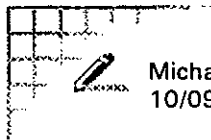
SEC. 305. Notwithstanding any other provision of Federal law, funds provided to the Department of Education or to an applicable program, may not be used to field test, implement or administer any federally sponsored national test in reading, mathematics, or any other subject: Provided, That the National Assessment Governing Board shall retain the exclusive authority over the development of voluntary national tests as described in section 307 of the Department of Education Appropriations Act, 1998.

OCT-10-98 09:08 PM MIKECOHEN

301 6224044 15:00 No.002 P.03
National Tests

The National Academy of Sciences shall conduct a study to determine the feasibility of including test items from the National Assessment of Education Progress or other tests in state and commercial assessments for the purpose of producing individual scores linked to the National Assessment of Education Progress achievement levels, in 4th grade reading and 8th grade math. The study shall also examine the utility of the information provided by this procedure to parents, teachers, and students. The study shall be completed by June 1, 1999.

Notwithstanding any other provision of Federal law, no funds provided to the Department of Education or to an applicable program in this Act or in any other Act in fiscal year 1999 may be used for a pilot test that would yield individual student, school, school district, or state scores as part of the development of any federally sponsored voluntary national test in reading, mathematics, or any other subject, or to field test, implement or administer any such test; Provided, That the National Assessment Governing Board shall retain exclusive authority over the development of voluntary national tests as described in Section 307 of the Department of Education Appropriations Act, 1998.



Michael Cohen
10/09/98 05:26:15 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Barbara Chow/OMB/EOP, Bruce N. Reed/OPD/EOP

cc:

Subject: Goals 2000 and Ed-Flex

After hearing Barbara's description of the Republican idea of paring down the block grant proposal to specifying new ways in which Goals 2000 funds could be used, I think the Republican strategy may be shifting away from advocating block grants and towards a new assault on Goals 2000, in order to have something to take away from the table. I believe we should resist, in a number of ways:

1. Oppose the idea of further specifying the purposes for which Goals \$ can be used. This seems innocuous, especially since Goals funds are designed to be flexible enough to be used for virtually any purpose consistent with a school, district or state plan for education reform. However, the last time we went down this road with the Republicans, we got burned. In '95 we agreed to a provisions that "clarified" that schools could buy computers with Goals 2000 funds; we agreed because it had no practical effect--schools already could do that. As a result, the amendment sponsor (Ishtook) claimed that he gutted the program, and David Broder wrote a column claiming that POTUS caved on his flagship program.

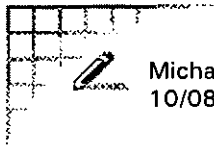
We shouldn't open ourselves to that again. If the R's want to enumerate some of the uses of federal program funds, they should clarify how their Title VI funds can be used.

2. Stiffen our resolve on the requirement that states have a Goals 2000 plan in order to participate in Ed-Flex. This is the provision that Goodling removed from the Castle/Roemer Ed-Flex bill (with the agreement of Castle, Roemer and the Dem. gov's.) Our position has been to take Ed-Flex as an alternative to block grants, and not fight too hard over the G2k provision. I now think we should dig in much harder, especially since the R's appear to be already giving so much ground on their block grant proposal. At this point, giving ground on the Goals 2000 provision is a gift to the R's, and to the gov's--who need ed-flex much more than we do, and who haven't done much to help us on the rest of our education agenda.

The rationale for requiring a Goals 2000 plan in the first place is sound--we will give added flexibility to a state only in the context of an overall, cohesive approach to reforming education so kids can meet high standards (and to accountability provisions that are not in dispute). Without such a plan, how could the state tell if a particular federal requirement was in fact interfering with its own approach to education reform?

Clearly we should still use Ed-Flex if needed as an alternative to block grants. We should also be willing to take Ed-Flex if Castle/Roemer want to push it on the omnibus bill--as long as it contains the Goals provision.

Hope this makes sense to you; track me down if you need anything.



Michael Cohen
10/08/98 12:48:34 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP

Subject: Testing strategy

As Bruce and I discussed, when we negotiate the testing language, we should make the following proposals:

1. **Propose the Senate language**, which prohibits us from field testing, administering or implementing the test with FY 99 funds, but permits pilot testing.
2. **Propose a National Academy of Science Study** to examine the feasibility of including a subset of NAEP test items into state and commercial tests, in order measure how well kids measure up to NAEP standards as well as state or local standards without having to administer a separate national test. (bill language for this option will be finalized shortly)
3. **Propose a restriction on using FY99 funds for 6 months, for pilot tests that would produce individual scores.**
4. **Propose a restriction on using FY99 funds for pilot tests that would produce individual scores.** This restriction would last for a full year, and would end at the end of FY99 when the appropriations bill expired.

The language for 3 & 4 is below, though the more I think about it the less option 3 makes sense to me. If in the negotiations we explain that the pilot tests NAGB is planning for April don't involve individual scores, then they will probably think the 6 month ban on something that isn't going to happen anyway is really silly.

5. **Propose reducing the appropriations for test development from \$16 to \$8 million.** These funds have been requested in the Education Department's Fund for the Improvement of Education (FIE) account.

Language for steps 3 and 4.

3. 6 month Restriction on Pilot Test With Individual Scores

Notwithstanding any other provision of Federal law, no funds provided to the Department of Education or to an applicable program in this Act or in any other Act in fiscal year 1999 may be used prior to April 1, 1999 for a pilot test that would yield individual student, school, school district, or state scores as part of the development of any federally sponsored voluntary national test in reading, mathematics, or any other subject, or to field test, implement or administer any such test; Provided, That the National Assessment Governing Board shall retain exclusive authority over the development of voluntary national tests as described in

Section 307 of the Department of Education Appropriations Act, 1998.

4. Restriction on Pilot Test With Individual Scores

Notwithstanding any other provision of Federal law, no funds provided to the Department of Education or to an applicable program in this Act or in any other Act in fiscal year 1999 may be used for a pilot test that would yield individual student, school, school district, or state scores as part of the development of any federally sponsored voluntary national test in reading, mathematics, or any other subject, or to field test, implement or administer any such test; Provided, That the National Assessment Governing Board shall retain exclusive authority over the development of voluntary national tests as described in Section 307 of the Department of Education Appropriations Act, 1998.

✓

FY 1999 APPROPRIATIONS BILLS: LANGUAGE ISSUES

Appropriations Bill: Labor/HHS/ED

Language Issue: Bilingual Education

Location in House Bill: Section 311, General Provisions (Also in House report language)

Location in Senate Bill: Not in Senate Bill

Current Bill Language: See Attachment.

Administration Proposal:

- Strike the House *Report* Language (page 161) that describes the 3 “additional provisions.”
- Strike House *Bill* language Section 7116(I) (2) that contains a priority for programs moving students out of Bilingual Education in 2 years.
- Strike the House *Bill* language Section 7125, Maximum Enrollment Period, that provides an absolute cut-off after 4 years.
- Amend House *Bill* language Section 7126(b) to read:

(b) CONTENTS --

(1) EFFECTIVENESS OF PROGRAMS. Such report shall identify

(A) The 10 percent of eligible entities receiving funds under this subpart that have been the least successful in assisting students in attaining ~~English~~ proficiency in English and other academic subjects by the end of their second third academic year of enrollment in a bilingual education program or special alternative instructional program; and

(B) The 10 percent of those entities that have been the most successful in so assisting students.

(2) CONTINUANCE. Such report shall also explain if and why funding will be continued for a program described under paragraph (1)(A).

1 “(B) no additional corrective action may
2 be taken against the State with respect to the
3 failure by the public agency described in para-
4 graph (1).

5 “(3) For purposes of paragraph (1)(A), the
6 number of eligible children with disabilities in adult
7 prisons under the supervision of the other public
8 agency and the number of eligible individuals with
9 disabilities in the State under the supervision of the
10 State educational agency shall be determined by the
11 Secretary on the basis of the most recent satisfac-
12 tory data available to the Secretary.”.

13 ~~SEC. 311. The Elementary and Secondary Education~~
14 ~~Act of 1965 is amended—~~

15 (1) in section 7116(i)—

16 (A) by striking paragraphs (1) through
17 (3); and

18 (B) by redesignating paragraphs (4) and
19 (5) as (1) and (2), respectively;

20 (2) in section 7120—

21 (A) by redesignating paragraphs (2) and
22 (3) as (4) and (5), respectively; and

23 (B) by inserting after paragraph (1) the
24 following:

1 “(2) assists students enrolled in the program or
2 activity to move into a classroom where instruction
3 is not tailored for students of limited English pro-
4 ficiency—

5 “(A) by the end of the first grade, in the
6 case of students enrolling when they are in kin-
7 dergarten; or

8 “(B) by the end of their second academic
9 year of enrollment, in the case of other stu-
10 dents;

11 “(3) demonstrates that students of limited
12 English proficiency meet the same challenging State
13 content standards and challenging student perform-
14 ance standards during and after the period in which
15 students are enrolled in a bilingual education pro-
16 gram or a special alternative instructional program
17 expected for all children and youth as required by
18 section 1111(b);”;

19 (3) in subpart 1, by adding at the end the fol-
20 lowing new sections:

21 “SEC. 7125. MAXIMUM ENROLLMENT PERIOD.”

22 “(a) LIMITATION.—Except as provided in this sec-
23 tion, no student may be enrolled in a bilingual education
24 program or a special alternative instructional program

1 under this subpart for a period of more than 2 years, ex-
2 cept where the school in which the student is enrolled—

3 “(1) conducts a comprehensive evaluation of the
4 overall academic progress of the student; and

5 “(2) the results of the evaluation indicate that
6 lack of English proficiency is impeding the academic
7 progress of the student in meeting grade promotion
8 and graduation standards and, in the case of a child
9 with a disability, attainment of the objective in the
10 child’s individualized education program under the
11 Individuals with Disabilities Education Act (20
12 U.S.C. 1400 et seq.).

13 Any student with respect to whom the requirements of this
14 subsection are met may remain in the program for a third
15 year, except as provided in subsection (b)(2).

16 “(b) EVALUATION.—

17 “(1) IN GENERAL.—The evaluation required by
18 subsection (a) shall involve teachers and school per-
19 sonnel familiar with the student’s overall academic
20 progress. The results of such an evaluation shall be
21 made available to the parents of the student.

22 “(2) SCHEDULE.—An evaluation shall be car-
23 ried out at the end of the third year the student is
24 in the program described in subsection (a) if the stu-
25 dent is to continue in the program for a fourth year

1 and shall be conducted in accordance with paragraph
2 (1).

3 “(3) LANGUAGE DEVELOPMENT.—Each evalua-
4 tion shall indicate how the student's English lan-
5 guage development will be addressed during the pe-
6 riod a student is retained in the program. The stu-
7 dent's academic program during that period shall
8 emphasize mastery of English.

9 “(c) FINAL EXTENSION.—No student shall remain in
10 a bilingual education program or special alternative in-
11 structional program described in subsection (a) for more
12 than 4 years.

13 “SEC. 7126. ANNUAL REPORT.

14 “(a) IN GENERAL.—The Secretary shall submit a re-
15 port each year, beginning in fiscal year 2001, to the Com-
16 mittees on Appropriations and Education and the Work-
17 force of the House of Representatives and the Committees
18 on Appropriations and Labor and Human Resources of
19 the Senate in accordance with subsection (b).

20 “(b) CONTENTS.—

21 “(1) EFFECTIVENESS OF PROGRAMS.—Such re-
22 port shall identify the 10^(A) percent of eligible entities
23 receiving funds under this subpart that have been
24 the least successful in assisting students in attaining
25 ~~English~~ proficiency ^{and other academic subjects} by the end of their ~~second~~ ^{third} ~~aca-~~
_{in} ^{English}

1 demic year of enrollment in a bilingual education
2 program or special alternative instructional program;

3 “(2) CONTINUANCE.—Such report shall also ex-
4 plain if and why funding will be continued for a pro-
5 gram described under paragraph (1)^(A)”; and

6 (4) in section 7501(15)—

7 (A) by striking subparagraph (C);

8 (B) by inserting “and” at the end of sub-
9 paragraph (A); and

10 (C) by striking “; and” at the end of sub-
11 paragraph (B) and inserting a period.

12 This title may be cited as the “Department of Edu-
13 cation Appropriations Act, 1999”.

14 TITLE IV—RELATED AGENCIES

15 ARMED FORCES RETIREMENT HOME

16 For expenses necessary for the Armed Forces Retire-
17 ment Home to operate and maintain the United States
18 Soldiers’ and Airmen’s Home and the United States Naval
19 Home, to be paid from funds available in the Armed
20 Forces Retirement Home Trust Fund, \$70,745,000, of
21 which \$15,717,000 shall be for construction and renova-
22 tion of the physical plants at the United States Soldiers’
23 and Airmen’s Home and the United States Naval Home.

and
of (B) the 10% of
those entities that
have been the
most successful
in so assisting
students.

reform elementary and secondary school programs that serve Indian students, including preschool children. Grantees must develop a comprehensive plan and assure that the programs they carry out will help Indian students reach the same challenging standards that apply to all students. This program supplements the regular school program to help Indian children sharpen their academic skills, bolster their self-confidence, and participate in enrichment activities that would otherwise be unavailable.

The Department has not identified specific, measurable student achievement standards consistent with the requirements of the Government Performance and Results Act for Indian education grants to local education agencies. The Committee believes that it is essential for the Department to develop specific, measurable student academic achievement measures for this program. Such indicators should include baseline data on the academic improvements and specific, measurable improvements that are expected to occur as a result of proposed funding levels.

Federal administration

The bill provides \$4,000,000 for Federal administration, the same as the budget request. Funds provided pay the salaries and expenses of the Office of Indian Education and the National Advisory Council on Indian Education and support the White House Initiative on Tribal Colleges and Universities. The Office of Indian Education administers part A of Title IX of the Elementary and Secondary Education Act. The Office seeks to ensure that its programs are integrated with other programs for maximum benefit for Indian students. The National Advisory Council on Indian Education monitors Federal activities connected to Indian education and prepares an annual report to Congress on findings and recommendations. The Council, comprised of Indian and Alaska Natives, serves as a connection between the Indian community and the Secretary on Indian education affairs. The White House Initiative on Tribal Colleges and Universities is a new effort to promote self-determination among Indians in higher education. Twenty-nine tribal colleges and universities across the country serve 25,000 Indian students.

BILINGUAL AND IMMIGRANT EDUCATION

The bill includes \$354,000,000 for bilingual and immigrant education programs. This amount is \$33,000,000 below the Administration's fiscal year 1999 budget request and the same as the fiscal year 1998 appropriation. This account supports programs authorized by parts A, B, and C of title VII of the Elementary and Secondary Education Act.

Bilingual education: instructional services

The bill provides \$160,000,000 for instructional services, \$8,000,000 below the budget request and the same as the fiscal year 1998 amount. Instructional Services programs assist local educational agencies (LEAs) in implementing programs for limited English proficient (LEP) students.

There are four types of grants, primarily to LEAs, for instructional services to limited English proficient students:

Three-year *Program Development and Implementation Grants* for school districts to develop and implement new programs for LEP students;

Two-year *Program Enhancement Grants* to enhance or expand existing programs for LEP students;

Five-year *Comprehensive School Grants* for school-wide programs for LEP students that reform, restructure, and upgrade all relevant programs and operations within an individual school; and

Five-year *Systemwide Improvement Grants* for district-wide projects for LEP students to improve, reform, and upgrade relevant programs and operations within an entire LEA.

Funding for projects that primarily instruct in English and emphasize the rapid transition to regular classes ("special alternative instruction projects"), is limited to 25 percent of the appropriation.

Approximately 670 grants are made annually through this discretionary grant program administered by the Secretary.

In prior years, the Congress has included language in the bill indicating that " * * * the Department of Education should only support instructional programs which insure that students completely master English in a timely fashion (a period of three to five years) while meeting rigorous achievement standards in the academic content area." The Director of the Office of Bilingual Education and Minority Languages Affairs provided testimony to the Committee on the effectiveness of bilingual programs. She used as an example of the effectiveness data from California that " * * * on average students in well implemented bilingual programs are exiting these programs within an average of four to five years." [Emphasis added] The Committee is concerned that these grantees are not achieving the rapid transition to English classes and the existing language included by the Congress seems to be having little effect. The Committee has, therefore, included the following additional provisions in its recommendations:

1. Delete the provision capping at 25% the amount of funding that can be used for programs that mainly provide instruction in English (including immersion type programs). As a result, the Department can, and should, use more funding for these programs that emphasize the rapid transition to English fluency and regular classroom instruction;

2. Limit any student's participation in a federally funded bilingual education program to two years. Two additional one year extensions are permissible based upon a student-by-student waiver by the Secretary;

3. Preference for refunding is given to programs that are successful in transitioning students with limited English proficiency into regular classes within two years and which can demonstrate that students that have made the transition are functioning at the same levels of academic achievement as native English speakers.

The Committee also believes that the Department must focus its Government Performance and Results Act indicators on the speed of transition to regular classes by limited English proficient students and the levels of academic achievement of these students while still in bilingual classes and after the transition to regular

Delete

classes. The current objectives indicating only that English proficiency and academic achievement will "improve" are insufficient. The objective should be that limited English proficient students move rapidly to regular classes and achieve at levels that equal or exceed that of English speakers in challenging classes meeting high academic standards.

The Committee also believes that the Department, after having administered the bilingual education program for 30 years, should be able to provide the Committee as part of its GPRA submissions baseline data on the time needed for LEP students to transition to regular classes and their academic achievement after transition.

Bilingual education: support services

The bill provides \$14,000,000 for support services. This amount is the same as the budget request and the fiscal year 1998 amount. This program provides discretionary grants and contracts in four specific areas: research and evaluation; dissemination of effective instructional models; data collection and technical assistance; and a national clearinghouse to support the collection, analysis, and dissemination of information about programs for limited-English proficient students.

The Committee believes that the Department has not identified appropriate specific, measurable standards consistent with the requirements of the Government Performance and Results Act for bilingual education support services. It is essential for the Department to develop specific, measurable indicators of the degree to which local education agencies and teachers are accessing training and technical assistance services, the degree to which these new techniques are integrated into school or classroom practices and the degree to which the techniques are successful in improving the rapid transition to regular classes by limited English proficient students and how these techniques have improved the success of students that have made the transition to regular classes. Such data should include baseline data on the problems and specific, measurable improvements are expected to occur as a result of proposed funding levels.

Bilingual education: professional development

The bill provides \$25,000,000 for professional development services. This amount is \$25,000,000 below the President's request and the same as the amounts currently available for this activity.

The purpose of Professional Development grants is to increase the pool of trained teachers and strengthen the skills of teachers providing instruction to limited English proficient students. Funds are available to support the training and retraining of bilingual education teachers and teacher's aides, graduate fellowships related to fields of bilingual education, and grants to institutions of higher education to improve bilingual teacher training programs.

The Department has proposed specific, measurable standards consistent with the requirements of the Government Performance and Results Act for bilingual education professional development. These standards relate to the number of teachers placed each year and the percentage of teachers trained which actually are placed in an instructional setting with LEP students. It is essential that

the Department also develop indicators relating to the graduate program and the impact of training graduate students on the expansion of capacity of institutions to train bilingual teachers. The Committee also believes that the Department should provide better baseline data on each of its indicators.

Immigrant education

The bill includes \$150,000,000 for immigrant education, the same as both the budget request and the fiscal year 1998 level.

The Immigrant Education program provides Federal assistance to local educational agencies (LEAs) that have large numbers of recently arrived immigrant students. LEAs then use those funds to enhance instruction for immigrant children and youth or for the costs of basic instructional services directly attributable to the presence of immigrant children. Eligible LEAs are those that enroll at least 500 recent immigrant students or where those students represent at least 3 percent of the total enrollment. Immigrant students may be counted only if they have been enrolled in U.S. schools for less than three complete academic years.

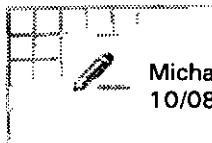
The Department makes grants to State educational agencies, which then make subgrants to eligible LEAs within the State. A 1991 GAO study found that most LEAs use their Immigrant Education funds to provide special instruction to limited English proficient students.

The Department has included measures required under the Government Performance and Results Act relating to the amount of immigrant education funds going directly to the classroom. However, in this program, as in most others, the Committee feels that indicators of academic achievement must be developed. Baselines and annual reporting systems need to be developed and projections of improvements in various program indicators as a result of proposed funding levels need to be included in the President's budget.

Foreign language assistance

The bill provides \$5,000,000 for the foreign language assistance program, the same as both the request and fiscal year 1998 amount. This program provides competitive grants to State educational agencies (SEAs) and local educational agencies (LEAs) to increase the quantity and improve the quality of instruction in foreign languages deemed critical to the economic and security interests of the United States. Under this program, 3-year grants are awarded to SEAs to promote systemic improvement of foreign language instruction and to LEAs to support model programs of instruction that exhibit the capability for continuing beyond the 3-year grant period. LEA grants may include a professional development component. At least three-quarters of the appropriation must be used for the expansion of foreign language education in the elementary grades.

The Department has included measures required under the Government Performance and Results Act relating to the improvement in foreign language fluency and the continuation of foreign language in the curriculum after the period of federal funding ceases. However, in addition to the identification of goals, baselines, and annual reporting systems need to be developed and projections of



Michael Cohen
10/08/98 12:48:34 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: Testing strategy

As Bruce and I discussed, when we negotiate the testing language, we should make the following proposals:

1. **Propose the Senate language**, which prohibits us from field testing, administering or implementing the test with FY 99 funds, but permits pilot testing.
2. **Propose a National Academy of Science Study** to examine the feasibility of including a subset of NAEP test items into state and commercial tests, in order to measure how well kids measure up to NAEP standards as well as state or local standards without having to administer a separate national test. (bill language for this option will be finalized shortly)
3. **Propose a restriction on using FY99 funds for 6 months, for pilot tests that would produce individual scores.**
4. **Propose a restriction on using FY99 funds for pilot tests that would produce individual scores.** This restriction would last for a full year, and would end at the end of FY99 when the appropriations bill expired.

The language for 3 & 4 is below, though the more I think about it the less option 3 makes sense to me. If in the negotiations we explain that the pilot tests NAGB is planning for April don't involve individual scores, then they will probably think the 6 month ban on something that isn't going to happen anyway is really silly.

5. **Propose reducing the appropriations for test development from \$16 to \$8 million.** These funds have been requested in the Education Department's Fund for the Improvement of Education (FIE) account.

Language for steps 3 and 4.

3. 6 month Restriction on Pilot Test With Individual Scores

Notwithstanding any other provision of Federal law, no funds provided to the Department of Education or to an applicable program in this Act or in any other Act in fiscal year 1999 may be used prior to April 1, 1999 for a pilot test that would yield individual student, school, school district, or state scores as part of the development of any federally sponsored voluntary national test in reading, mathematics, or any other subject, or to field test, implement or administer any such test; Provided, That the National Assessment Governing Board shall retain exclusive authority over the development of voluntary national tests as described in

ED Updates

Testing:

Ban from doing pilots or other things that produce indiv students or school or school district or state scores.

Bilingual:

Becerra doesn't like what we're doing (what?)
(must it be the same or not?)

Barbara pushing for something - what Oleg wants.
- We should go w/ Becerra

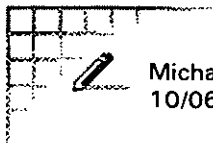
EdFlex:

Goodling wants to put an omnibus

95% there on substance

should try to push for 570 - for ed funds - but basically ok.

Most imp - we can't do EdFlex alone // has to be part of
negot. involving block grant.



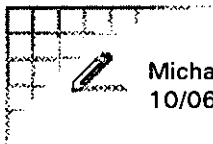
Michael Cohen
10/06/98 06:15:32 PM

Record Type: Record

To: Laura Emmett/WHO/EOP
cc:
Subject: daily ed update

Sorry for not addressing to you in the first place

----- Forwarded by Michael Cohen/OPD/EOP on 10/06/98 06:16 PM -----



Michael Cohen
10/06/98 06:11:32 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc:
Subject: daily ed update

Here's what I know:

1. Literacy--passed the Senate; Goodling's staff says this will be "packaged with other things in the House before it goes to the floor, including national testing.." We are not sure what this means, but believe that Goodling may threaten to hold up literacy bill unless we cave on testing. Goodling called Riley a little while ago--Riley is now trying to call him back. Goodling staff say they don't know what the call is about, but we presume its on this issue. I'll get to one of you as soon as I here from Riley about the conversation.

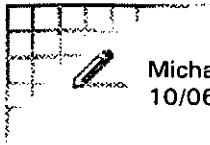
Last year when he did this (by cancelling the mark-up on the reading bill because he was ticked off that we were moving forward on testing) we issued a statement saying that he was stopping everything that would help kids read- tutors, teacher training, and reading standards and tests.

2. Charter Schools--being hotlined in the Senate this afternoon/evening. Kennedy's staff is nervous that, because of lukewarm support from Dems, we will see some amendments come out of the woodwork on this one. Daschle apparantly has an amendment on fetal alcohol syndrome that both Kennedy and Coats staff are worried about. NEA staff continues to raise questions about this, and both Kennedy staff and I have pushed back.

3. Class Size. --Last I've heard, as reported earlier today--Gephardt, Obey, Frost are all for getting a victory here. Gephardt in particular has told this to Riley, Erskine and Patty Murray. Murray talked to Lew this moring, and Jack agreed that we are supporting her effort.

Obey's staff reports that class size is very much on the table in the discussions among the principals; R's have not agreed to a final number on Title 1 because they want to taken into account anything that might happen on class size (We need to make sure we don't wind up in a situation where the \$490 million increase we asked for in Title 1 becomes our class size \$--Riley and the education groups would rightfully see that as a defeat, not a victory . Barbara Chow knows this). Obey's staff also thinks that the R's will want to match any real \$ we get for class size with an increase in funding for their priorities, such as IDEA.

4. Voc. Ed.--House and Senate staff have been meeting on this today, but I don't have any new information since this morning.



Michael Cohen
10/06/98 06:38:50 PM

Record Type: Record

To: Laura Emmett/WHO/EOP, Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc:

Subject: one more education item

Ed-Flex: The governors continue their singular focus on Ed-Flex; last week there was a bipartisan gov. letter to House and Senate leadership, urging them to include the Ed-Flex bill we support in the omnibus appropriations bill. We support this effort, but think it is most likely to happen if the R's push for block grants, and we counter with Ed-Flex. Now, Gov's Carper, Chiles and Romer have told Fred Duval they want to talk to someone here who is driving our Ed-Flex effort (but not me--they want someone who will be personally involved in the end-game negotiations on appropriations). Fred is looking for someone willing to take the call--Erskine, Jack Lew or Sylvia Mathews are on his list. I'll work on talking points for whoever gets the call.

Resolution of Education Language Issues in the Appropriations Bills

Labor/HHS/ED:

National Testing -- Adopt the Senate language (Section 305 of the Senate Committee bill).
[DEPARTMENT IS WORKING ON REQUESTED BILL/REPORT LANGUAGE]

Block Grants -- Strike the House block grant provision (Section 308 of the House committee bill). The default position is to accept the Administration-supported version of Ed-Flex.

IDEA amendment on prisoners (Riggs) -- Strike the House language (Section 310 of the House Committee bill). If deletion is not possible, modify the language to apply to 18-21 year olds in adult prisons only (instead of all 18-21 year olds). See Attachment A for modification.

IDEA amendment on discipline (Livingston) -- Strike the House language (Section 309 of the House Committee bill). Preferable also to commission a GAO or NAS study on the extent to which IDEA requirements prevent schools from maintaining safe and orderly environment. [Note: Harkin may have already convinced Livingston to drop amendment in exchange for this study.] See Attachment B for study language. The second alternative to the amendment would be codification of schools' authority to go to hearing officers to remove disabled students for additional periods of 45 days if schools can demonstrate continued danger. See attachment C for this language. If deletion of amendment and substitutions are not possible, seek these modifications: (1) reinstate the 45 day limit (preferred), (2) remove "could have," (3) insert "serious" before injury. See Attachment D for this modification.

D.C. School Reform -- Strike the House Report Language that restricts funding for \$20 million for D.C. School Reform from the ED FIE Program (OERI).

Bilingual Education -- Strike the House *Report* Language. Strike House *Bill* language Section 7116(I) (2) that contains a priority for programs moving students out of Bilingual Education in 2 years. We don't support the 2 year goal and would prefer not to have a priority referring to a time limit. Strike the House *Bill* language Section 7125, Maximum Enrollment Period, that provides an absolute cut-off after 4 years. We do not support any absolute cut-off of services. Amend House *Bill* language Section 7126(b) to read:

(b) CONTENTS --

(1) EFFECTIVENESS OF PROGRAMS. Such report shall identify

(A) The 10 percent of eligible entities receiving funds under this subpart that have been the least successful in assisting students in attaining **English proficiency in English and other academic subjects** by the end of their ~~second~~ **third** academic year of enrollment in a bilingual education program or special alternative instructional program; and

(B) The 10 percent of those entities that have been the most successful in so assisting students.

(2) CONTINUANCE. Such report shall also explain if and why funding will be continued for a program described under paragraph (1)(A).

Internet Access in Schools & Libraries -- Strike the House (Labor/HHS/ED) and Senate (Commerce/Justice/State) bill language that requires filtering devices. Administration would support an alternative/modification, that would require certification of acceptable-use policies but would not prescribe that they be software-based.

D.C.:

Permit Use of Federal Funds for Private School Vouchers in D.C. -- Strike the Bill language (Title II).

Prohibition of Payment of Attorneys' Fees in Special Education Cases -- Strike the House language (Sec. 130). Fallback would be to first commission a study of current system (including appropriateness of litigation) in DC. (ED is currently drafting study language) Second alternative would be to drop language prohibiting payment in *administrative* hearings. (See attachment E for modification)

LABOR/HHS/EDUCATION

FY 1999 APPROPRIATIONS BILLS: LANGUAGE ISSUES

Appropriations Bill: Labor/HHS/Education

Language Issue: National Testing

Location in House Bill: Section 305, General Provisions

Location in Senate Bill: Section 305, General Provisions

Current Bill Language: See Attachment.

Administration Proposal: Delete the House language prohibition. Adopt the Senate language.

House Committee bill (H.R. 4274):

SEC. 305. Part C of the General Education Provisions Act (20 U.S.C. 1231 et seq.) is amended by adding at the end the following:

SEC. 447. PROHIBITION ON FEDERALLY SPONSORED TESTING.

(a) GENERAL PROHIBITION- Notwithstanding any other provision of Federal law, funds provided to the Department of Education or to an applicable program, may not be used to develop, plan, implement (including pilot testing or field testing), or administer any federally sponsored national test in reading, mathematics, or any other subject that is not specifically and explicitly provided for in authorizing legislation enacted into law.

(b) EXCEPTIONS- Subsection (a) shall not apply to the Third International Mathematics and Science Study or other international comparative assessments developed under the authority of section 404(a)(6) of the National Education Statistics Act of 1994 (20 U.S.C. 9003(a)(6) et seq.), and administered to only a representative sample of pupils in the United States and in foreign nations.!

Senate Committee bill (S. 2440):

SEC. 305. Notwithstanding any other provision of Federal law, funds provided to the Department of Education or to an applicable program, may not be used to field test, implement or administer any federally sponsored national test in reading, mathematics, or any other subject: *Provided*, That the National Assessment Governing Board shall retain the exclusive authority over the development of voluntary national tests as described in section 307 of the Department of Education Appropriations Act, 1998.

This section shall not apply to the Third International Mathematics and Science Study, the National Assessment of Education Progress or other international comparative assessments developed under the authority of section 404(a)(6) of the National Education Statistics Act of 1994 (20 U.S.C. 9003(a)(6) et seq.), and administered to only a representative sample of pupils in the United States and in foreign nations.

FY 1999 APPROPRIATIONS BILLS: LANGUAGE ISSUES

Appropriations Bill: Labor/HHS/ED

Language Issue: Block Grants

Location in House Bill: Section 308, Education General Provisions

Location in Senate Bill: Not in Senate Bill

Current Bill Language: See Attachment.

Administration Proposal:

- Strike Section 308 of the Education General Provisions in the House bill.
- Default position is Administration's EdFlex Proposal.

House
Committee
Bill

CONFIDENTIAL

building purposes authorized under section
Any institution seeking to use part A or part B funds
for endowment building purposes shall indicate such inten-
tion in its application to the Secretary and shall abide by
departmental regulations governing the endowment chal-
lenge grant program.

SEC. 307. None of the funds made available in this
Act may be used to enforce the requirements of section
428(b)(1)(U)(iii) of the Higher Education Act of 1965
with respect to any lender when it is made known to the
Federal official having authority to obligate or expend
such funds that the lender has a loan portfolio under part
B of title IV of such Act that is equal to or less than
\$5,000,000.

Block
Grant

SEC. 308. (a) STATE FUNDS FOR INNOVATIVE PRO-
GRAMS.—Notwithstanding any other provision of law, a
State may, upon notice to the Secretary, use some or all
of the funds made available to the State for fiscal year
1999 under title III of the Goals 2000: Educate America
Act (20 U.S.C. 5881 et seq.) and part B of title II of
the Elementary and Secondary Education Act of 1965 (20
U.S.C. 6641 et seq.) as if made available under title VI
of the Elementary and Secondary Education Act of 1965.

(b) LOCAL FUNDS FOR INNOVATIVE PROGRAMS.—
Notwithstanding any other provision of law, a local edu-

1 educational agency described in section 304(e) of the Goals
2 2000: Educate America Act (20 U.S.C. 5881 et seq.) may,
3 upon notice to the Secretary, use some or all of the funds
4 made available to it under title III of such Act for fiscal
5 year 1999 as if made available under title VI of the Ele-
6 mentary and Secondary Education Act of 1965.

SEC. 309. Section 615(k)(1)(A)(ii) of the Individuals
with Disabilities Education Act (20 U.S.C.
1415(k)(1)(A)(ii)) is amended—

(1) in matter preceding subclause (I), by strik-
ing ", but for not more than 45 days";

(2) in subclause (I), by striking "or" at the
end;

(3) in subclause (II), by striking the period at
the end and inserting "; or"; and

(4) by adding at the end the following:

"(III) the child intentionally ex-
hibits violent behavior that has re-
sulted in, or could have resulted in,
physical injury to the child or to oth-
ers while at school or at a school func-
tion under the jurisdiction of a State
or local agency."

SEC. 310. Section 616(e) of the Individuals with Dis-
abilities Education Act (20 U.S.C. 1416(e)) is amended—

EA-Flex - Cohen attachment

I

105TH CONGRESS
2D SESSION

H. R. 4590

To allow all States to participate in activities under the Education Flexibility Partnership Demonstration Act.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 1998

Mr. CASTLE (for himself and Mr. ROEMER) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To allow all States to participate in activities under the Education Flexibility Partnership Demonstration Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Education Flexibility
5 Amendments of 1998".

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) States differ substantially in demographics,
9 in school governance, and in school finance and
10 funding. The administrative and funding mecha-

1-
2(1)

2

1 nisms that help schools in 1 State improve may not
2 prove successful in other States.

3 (2) Although the Elementary and Secondary
4 Education Act of 1965 and other Federal education
5 statutes afford flexibility to State and local edu-
6 cational agencies in implementing Federal programs,
7 certain requirements of Federal education statutes
8 or regulations may impede local efforts to reform
9 and improve education.

10 (3) By granting waivers of certain statutory
11 and regulatory requirements, the Federal Govern-
12 ment can remove impediments for local educational
13 agencies in implementing educational reforms and
14 raising the achievement levels of all children.

15 (4) State educational agencies are closer to
16 local school systems, implement statewide edu-
17 cational reforms with both Federal and State funds,
18 and are responsible for maintaining accountability
19 for local activities consistent with State standards
20 and assessment systems. Therefore, State edu-
21 cational agencies are often in the best position to
22 align waivers of Federal and State requirements
23 with State and local initiatives.

24 (5) The Education Flexibility Partnership Dem-
25 onstration Act allows State educational agencies the

1 flexibility to waive certain Federal requirements,
2 along with related State requirements, but allows
3 only 12 States to qualify for such waivers.

4 (6) Expansion of the waiver authority under
5 such Act will allow for the waiver of statutory and
6 regulatory requirements that impede implementation
7 of State and local educational improvement plans, or
8 that unnecessarily burden program administration,
9 while maintaining the intent and purposes of af-
10 fected programs, and maintaining such fundamental
11 requirements as those relating to civil rights, edu-
12 cational equity, and accountability.

13 (7) To achieve the State goals for the education
14 of children in the State, the focus must be on results
15 in raising the achievement of all students, not proc-
16 ess.

17 **SEC. 3. EXPANSION OF THE EDUCATION FLEXIBILITY PART-**
18 **nership Demonstration Act.**

19 (a) IN GENERAL.—Section 311(e) of the Goals 2000:
20 Educate America Act (20 U.S.C. 5891(e)) is amended—

21 (1) in paragraph (2)—

22 (A) by amending subparagraph (A) to read
23 as follows:

24 “(A) IN GENERAL.—The Secretary may
25 carry out an education flexibility demonstration

2(6)-
319X(1)A

1 program under which the Secretary authorizes
 2 a State educational agency that serves an eligi-
 3 ble State to waive statutory or regulatory re-
 4 quirements applicable to 1 or more programs or
 5 Acts described in subsection (b) or 1 or more
 6 programs described in subpart 2 of part A of
 7 title III of the Elementary and Secondary Edu-
 8 cation Act of 1965 (except section 3136 of such
 9 Act), other than requirements described in sub-
 10 section (c) of this Act and section 14401(c) of
 11 the Elementary and Secondary Education Act
 12 of 1965, for the State educational agency or
 13 any local educational agency or school within
 14 the State.”;

15 (B) by striking subparagraph (B); and

16 (C) by redesignating subparagraph (C) as
 17 subparagraph (B); and

18 (2) in paragraph (3), by amending subpara-
 19 graph (A) to read as follows:

20 “(A)(i) has—

21 “(I) developed a State improvement
 22 plan under section 306;

23 “(II) developed and implemented the
 24 challenging State content standards, chal-
 25 lenging State student performance stand-

2(a)(1)(B) [Goals, 311(e)(2)(A)]
3(a)(1)(C) [Goals, 311(e)(2)(C)]

5

1 ards, and aligned assessments described in
2 section 1111(b) of the Elementary and
3 Secondary Education Act of 1965, includ-
4 ing the requirements of that section relat-
5 ing to disaggregation of data, and for
6 which local educational agencies in the
7 State are producing the individual school
8 performance profiles required by section
9 1116(a) of such Act; or

10 “(III) made substantial progress, as
11 determined by the Secretary, toward devel-
12 oping and implementing the standards and
13 assessments, and toward having local edu-
14 cational agencies in the State produce the
15 profiles, described in subclause (I); and

16 “(ii) holds local educational agencies and
17 schools accountable for meeting the educational
18 goals described in the local applications submit-
19 ted under paragraph (5), and for taking correc-
20 tive actions, consistent with section 1116 of the
21 Elementary and Secondary Education Act of
22 1965, for the local educational agencies that do
23 not meet the goals; and”.

24 (b) AUTHORITY TO ISSUE WAIVERS.—Section 311(e)
25 of the Goals 2000: Educate America Act (20 U.S.C.

6

1 5891(e)) is amended further by adding at the end the fol-
2 lowing:

3 “(8) AUTHORITY TO ISSUE WAIVERS.—Notwith-
4 standing any other provision of law, the Secretary is
5 authorized to carry out the education flexibility dem-
6 onstration program under this subsection for each of
7 the fiscal years 1999 through 2003.”.

8 (c) ACCOUNTABILITY.—Section 311(f) of the Goals
9 2000: Educate America Act (20 U.S.C. 5891(f)) is amend-
10 ed by adding at the end the following: “In the case of
11 deciding whether to extend a State educational agency’s
12 authority to issue waivers under subsection (e), the Sec-
13 retary also shall review the progress of the State edu-
14 cational agency to determine if such agency—

15 “(1) has established procedures for increasing
16 the percentage of elementary school and secondary
17 school teachers in the State who have demonstrated,
18 by traditional or alternative routes, the subject mat-
19 ter knowledge and pedagogical skill necessary to pro-
20 vide effective instruction in the content area or areas
21 in which the teachers provide instruction; and

22 “(2) has decreased the percentage of elemen-
23 tary school and secondary school teachers teaching
24 in high poverty elementary schools and secondary

3(b) [Goals, 31(e)(B)]

3(c) [Goals, 31(f)(1) (2)]

7

1 schools who do not demonstrate such knowledge and
2 skills.”.

3 (d) TRANSITION RULES.—

4 (1) CONSTRUCTION.—Nothing in this Act or
5 the amendments made by this Act shall be construed
6 to affect the authority of a State educational agency
7 that has been granted waiver authority under the
8 following provisions of law:

9 (A) Section 311(c) of the Goals 2000:
10 Educate America Act as such section was in ef-
11 fect on the day before the date of enactment of
12 this Act.

13 (B) The proviso referring to such section
14 311(c) under the heading “**EDUCATION RE-**
15 **FORM**” in the Department of Education Ap-
16 propriations Act, 1996 (Public Law 104-134;
17 110 Stat. 1321-229).

18 (2) ELIGIBILITY.—A State educational agency
19 that has been granted waiver authority under a pro-
20 vision of law described in subparagraph (A) or (B)
21 of paragraph (1) prior to the date of enactment of
22 this Act shall be eligible to apply for waiver author-
23 ity under section 311(e) of the Goals 2000: Educate

3(d)

FY 1999 APPROPRIATIONS BILLS: LANGUAGE ISSUES

Appropriations Bill: Labor/HHS/Education

Language Issue: IDEA Amendment: Services to Disabled Youth 18-21 in Adult Prisons

Location in House Bill: Section 310 — General Provisions

Location in Senate Bill: Not in Senate bill.

Current Bill Language: See Attachment A.

Administration Proposal: Delete provision from bill.

Or, (although deletion is strongly preferred) modify language such that restriction would apply to 18-21 year old youth in adult prisons only. Although the amendment was intended to affect ED's authority with respect to only those 18-21 year old youth in adult prisons, without such restriction, this amendment would enable States to deny services to other 18-21 year old youth with minimal consequence from ED (withholding proportionate amount of funding only). (Attachment B -- modification of language not yet available)

Attachment A: IDEA Amendment: Services to Disabled Youth 18-21 in Adult Prisons

Rider Language:

SEC. 310. Section 616(c) of the Individuals with Disabilities Education Act (20 U.S.C. 1416(c)) is amended--

(1) by striking 'For purposes of this section' and inserting '(1) Notwithstanding subsections (a) and (b)'; and

(2) by striking 'the Secretary, in instances' and all that follows and inserting the following: 'the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency during a fiscal year to provide special education and related services to individuals who are 18 years of age or older, and the Secretary decides to take corrective action to ensure compliance with this part, may take only the following such corrective action (and such corrective action may only be taken with respect to payments for that fiscal year):

(A) Reduce or withhold payments to the State in an amount that is proportionate to the total funds allotted under section 611 to the State as the number of such individuals who are 18 years of age or older is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency.

(B) Ensure that any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

(2) Upon reduction or withholding of payments to a State for a fiscal year under paragraph (1)--

(A) with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons, the State shall be deemed to be in compliance with this part for that fiscal year; and

(B) no additional corrective action may be taken against the State with respect to the failure by the public agency described in paragraph (1).

(3) For purposes of paragraph (1)(A), the number of eligible children with disabilities in adult prisons under the supervision of the other public agency and the number of eligible individuals with disabilities in the State under the supervision of the State educational agency shall be determined by the Secretary on the basis of the most recent satisfactory data available to the Secretary.'

FY 1999 APPROPRIATIONS BILLS: LANGUAGE ISSUES

Appropriations Bill: Labor/HHS/Education

Language Issue: IDEA Amendment: (Sec. 309) Removal of Disabled Children Exhibiting Violent Behavior

Location in House Bill: Section 309 — General Provisions

Location in Senate Bill: Not in Senate bill.

Current Bill Language: See Attachment A.

Administration Proposal: Delete provision from bill.

Or, substitute language that would commission a study done by GAO or NAS of the extent to which IDEA requirements prevent schools from maintaining safe and orderly environment. This study would determine whether changes made to IDEA in reauthorization (many of which actually gave school additional flexibility in discipline) will in fact prevent schools from maintaining safe environments as is being claimed. [Note: Harkin recently proposed this as an alternative to Livingston]. (See Attachment B)

Or, substitute language that would codify schools' authority to go to hearing officers to remove disabled students for additional periods of 45 days if schools can demonstrate continued danger. According to ED, school officials who claim that the IDEA reauthorization prevents maintaining a safe school environment are often not aware of this authority. Codification would increase awareness, increasing schools' capacity to remain safe as a result. (See Attachment C)

Or, (although the above alternatives are strongly preferred) if substitutes are not possible, modify language to reinstate the 45 day limit. In addition, or if such a modification is not possible, remove "could have" and/or insert "serious" before injury. Without a 45 day limit, students with disabilities could be removed indefinitely, over parental objection, without being provided due process. Removing "could have" would eliminate the schools' authority to make incredibly subjective judgments about whether an action could possibly resulted in injury. Inclusion of the word "serious" would reduce some of that subjectivity. (See Attachment D)

Attachment A: IDEA Amendment: (Sec. 309) Removal of Disabled Children Exhibiting Violent Behavior

Rider Language:

SEC. 309. Section 615(k)(1)(A)(ii) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(k)(1)(A)(ii)) is amended--

(1) in matter preceding subclause (I), by striking ', but for not more than 45 days';

(2) in subclause (I), by striking 'or' at the end;

(3) in subclause (II), by striking the period at the end and inserting '; or'; and

(4) by adding at the end the following:

(III) the child intentionally exhibits violent behavior that has resulted in, or could have resulted in, physical injury to the child or to others while at school or at a school function under the jurisdiction of a State or local agency.'

Attachment B: IDEA Amendment: (Sec. 309) Removal of Disabled Children Exhibiting Violent Behavior

Alternative Language — Study:

~~SEC. 309. Section 615(k)(1)(A)(ii) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(k)(1)(A)(ii)) is amended—~~

~~— (1) in matter preceding subclause (I), by striking ‘, but for not more than 45 days’;~~

~~— (2) in subclause (I), by striking ‘or’ at the end;~~

~~— (3) in subclause (II), by striking the period at the end and inserting ‘; or’; and~~

~~— (4) by adding at the end the following:~~

~~— ‘(III) the child intentionally exhibits violent behavior that has resulted in, or could have resulted in, physical injury to the child or to others while at school or at a school function under the jurisdiction of a State or local agency.’~~

[Note: This is language for the study Harkin is proposing to Livingston]

Sec. 309 Amendments to the Individuals with Disabilities Education Act

GAO STUDY ON DISCIPLINE

SEC. 3XXX. (a) STUDY REQUIRED. The General Accounting Office shall conduct a study of a representative sample of local educational agencies to determine how the Individuals with Disabilities Education Act Amendments of 1997 affects their ability to provide for a safe and orderly learning environment for all children.

(b) STUDY ELEMENTS. The study required by subsection (a) shall include at least the following elements:

(1) In order to determine whether children with disabilities disproportionately engage in misconduct, the collection of information on the number and type of incidents of misconduct by disabled and nondisabled children, which shall be disaggregated—

(A) for misconduct involving weapons, drugs, behavior that is substantially likely to result in injury to self or others, and other types of misconduct as determined by the General Accounting Office; and
(B) by race, grade/age, and disability.

(2) In order to determine the extent to which children with disabilities are treated differently from children without disabilities, the collection of information on the disciplinary actions, such as suspension from school, that resulted from the incidents of misconduct described in paragraph (1), which shall be disaggregated in accordance with subparagraphs (A) and (B) of paragraph (1).

(3) In order to determine whether children with disabilities are being disciplined for behavior that is a manifestation of their disability, the collection of information on—

(A) the number of children with disabilities for whom a manifestation determination has been done;

(B) the number of those children for whom the behavior was determined to not be a manifestation of their disability, which shall be disaggregated in accordance with paragraph (1)(B).

(4) In order to determine the extent to which the protections provided by the Individuals with Disabilities Education Act (the IDEA) affect proposed disciplinary actions, the collection of information on the number of proposed disciplinary actions in which parents agreed with the action proposed by the school and the number of those proposed actions in which parents disagreed with the proposed action and exercised their right to a due-process hearing. This information shall include data on the number of instances in which schools exercised the authority to remove children for up to 45 days (under section 615(k)(1) of the IDEA) or requested a hearing officer to do so (under section 615(k)(2) of the IDEA). All data reported under this paragraph shall be disaggregated in

accordance with subparagraphs (A) and (B) of paragraph (1).

(5)(A) An opportunity for local educational agencies to identify situations in which they believed they could not effectively provide for a safe and orderly environment because of the requirements of the IDEA.

(B) A local educational agency that identifies such a situation shall be requested to describe how the IDEA impeded its ability to provide for a safe and orderly environment in sufficient detail to determine whether the agency understood and made full use of the options available to it under the IDEA, including, at a minimum—

(i) removing a child for up to 10 school days under section 615(k)(1)(A)(i) of the IDEA;

(ii) placing the child in interim alternative educational settings under sections 615(k)(1)(A)(ii) and 615(k)(2) of the IDEA;

(iii) extending an interim alternative educational setting under section 615(k)(7)(C) of the IDEA;

(iv) suspending and expelling a child for behavior that is not a manifestation of the child's disability, under section 615(k)(5) of the IDEA; and

(v) seeking removal of the child through injunctive relief; and

(vi) proposing a change in the child's placement.

(6) The collection of information on the extent to which individualized education programs (IEPs) were properly implemented for children with disabilities who engaged in a pattern of misconduct.

(7) The collection of information, from parents of children with disabilities who were disciplined, on the extent to which their children's IEPs were designed to address the needs of the children before the behavior occurred that resulted in discipline.

(8)(A) In order to determine whether local educational agencies are making appropriate use of behavioral interventions to reduce the need for disciplinary actions, as required by the IDEA, the collection of information on the extent to which children with disabilities who are the subject of disciplinary actions—

(i) had behavioral intervention plans (or IEPs that included behavioral strategies) before the behavior occurred that is the subject of the disciplinary action; and

(ii) had such plans or strategies after the disciplinary action occurred.

(B) Data collected and reported under subparagraph (A) shall be disaggregated—

(i) as required by paragraph (1)(B);

and

(ii) for children who were the subject of a long-term suspension or multiple short-term suspensions.

(c) DEADLINE FOR REPORT. The General Accounting Office shall report the results of the study required by this section to the appropriate committees of the Congress within 18 months of the enactment of this Act.

Attachment C

1 SEC. 3XXX. Section 615(x)(2) of the Individuals with
2 Disabilities Education Act is amended-

3 (1) by redesignating subparagraphs (A) through (D) as
4 clauses (i) through (iv);

5 (2) by inserting "(A)" after the paragraph heading;
6 and

7 (3) by adding at the end thereof a new paragraph (B)
8 to read as follows:

9 "(B) (i) If, at or before the end of the period
10 described in subparagraph (A), school personnel maintain that it
11 would be dangerous for the child to return to the current
12 placement (placement prior to removal to the interim alternative
13 educational setting), the local educational agency may request
14 an expedited hearing to extend the interim alternative
15 educational setting for not more than 45 days for each such
16 request.

17 "(ii) For purposes of clause (i), in
18 determining whether the child should be educated in the child's
19 current placement, in the interim alternative educational
20 setting, or in another placement, the hearing officer shall
21 apply the standards set out in subparagraph (A)."

Attachment C

* * * * *

Attachment D: IDEA Amendment: (Sec. 309) Removal of Disabled Children Exhibiting Violent Behavior

Language Modifications:

SEC. 309. Section 615(k)(1)(A)(ii) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(k)(1)(A)(ii)) is amended--

~~—(1) in matter preceding subclause (I), by striking `; but for not more than 45 days`;~~

(2) in subclause (I), by striking `or' at the end;

(3) in subclause (II), by striking the period at the end and inserting `; or'; and

(4) by adding at the end the following:

`(III) the child intentionally exhibits violent behavior that has resulted in, ~~or could have resulted in,~~ serious physical injury to the child or to others while at school or at a school function under the jurisdiction of a State or local agency.'.