

NLWJC - Kagan

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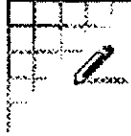
**Education - Ed Flex/Administrative
Block Grant**

Educ - Ed Flex
and
Educ - class size

Daily Report
March 10, 1999

Education --Ed-Flex and Class Size: The Senate and House continued debate today on ed-flex and class size measures. A time agreement was reached this afternoon between the Senate Republican and Democratic leadership on approximately ten amendments to the ed-flex bill debates today and tomorrow. Votes are scheduled for tomorrow, and final passage is expected by tomorrow night. These include an up-or-down vote on the Murray-Kennedy class size measure and a Jeffords-Lott amendment permitting local school districts to use FY99 class size funding for IDEA. We are releasing a statement from you strongly urging Senators to approve the Murray-Kennedy amendment and reject the Jeffords-Lott amendment which would prompt a veto threat for undermining last fall's bipartisan agreement on class size. We are not taking positions on other Democratic amendments, including a Boxer amendment on after-school programs, a Feinstein/Dorgan amendment on social promotion, a Bingaman amendment on drop-outs, and a Wellstone amendment on accountability in ed-flex. We will strongly oppose other Republican amendments to let local school districts use federal funding authorized under these Democratic amendments for IDEA instead. Republicans may also offer an amendment on discipline and IDEA, which will infuriate the disability community. Meanwhile, the House began floor debate on the ed-flex bill and rejected a Democratic effort to oppose a rule that prohibited amendments on class size. The House is currently debating a Miller-Kildee accountability amendment on ed-flex that drew strong support from a New York Times editorial today. Representatives Clay and Wu plan to offer a slightly modified class size amendment to the bill today that could get an up-or-down vote.

Edue - EdFlex
and
Edue - Class size

 Jason H. Schechter
03/10/99 06:44:32 PM

Record Type: Record

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

cc:

Subject: Statement by the President: Ed-Flex

THE WHITE HOUSE

Office of the Press Secretary
(Guatemala City, Guatemala)

For Immediate Release

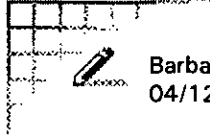
March 10, 1999

STATEMENT OF THE PRESIDENT

I am pleased that the Senate leadership has finally agreed to allow an up-or-down vote on an amendment to hire 100,000 teachers to reduce class size in the early grades. Last year, with bipartisan support, Congress enacted a down payment on this class size initiative, and school districts across the country will soon receive funds to begin hiring teachers. It is now time for Congress to finish the job by making a long-term commitment to class size reduction. I call on every Senator to vote for the Murray-Kennedy amendment to bring every class in the early grades down to a national average of 18.

I will vigorously oppose any Republican amendments to undermine the bipartisan agreement we reached last year on class size by diverting those funds to other uses, including special education. While we should increase funding for special education -- as we have done in past years and as my budget recommends continuing to do in the future -- we should not take this money from the recently enacted class size initiative. We should not pit our children against one another or change the rules now on our critical efforts to reduce class size. Smaller classes will help all students do better, and will reduce the need for special education services by helping teachers identify and assist as early as possible children who have learning problems. I call on every member of Congress to reject these efforts to tear down what we accomplished last year, and call on them instead to build on that significant bipartisan achievement.

30-30-30



Barbara Chow
04/12/99 01:54:23 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Broderick Johnson/WHO/EOP
cc: Leslie S. Mustain/OMB/EOP
Subject: Analysis of ED-Flex Targeting & Accountability

Below is an analysis that Leslie prepared describing in some depth the ED-flex targeting and accountability provisions in the House and Senate bills as well as the House offer. The Administration position is reflected in the Ed flex letter now circulating for clearance this afternoon.

----- Forwarded by Barbara Chow/OMB/EOP on 04/12/99 12:41 PM -----

Leslie S. Mustain  04/08/99 01:48:36
PM

Record Type: Record

To: Barbara Chow/OMB/EOP@EOP
cc: Barry White/OMB/EOP@EOP, Wayne Upshaw/OMB/EOP@EOP, Iatha H. Waters/OMB/EOP@EOP
Subject: Analysis of ED-Flex Targeting & Accountability

In response to your request, attached is an analysis of the Targeting and Accountability provisions in the House and Senate versions of the proposed ED-Flex legislation. Please let me know if you need additional information, a different format, etc.



ANALYSIS OF ED-FLEX BILL -- TARGETING AND ACCOUNTABILITY PROVISIONS

Targeting Provisions in ED-Flex Proposed Bills

House and Senate Provisions: The House bill would permit waivers "to allow schools to participate in part A of title I...if the percentage of children from low-income families in the attendance area of such school or who actually attend such school is within 5 percentage points of the lowest percentage of such children for any school in the local educational agency that meets the requirements of section 1113 of the Act." The Senate bill expressly prohibits waivers relating to "serving eligible school attendance areas in rank order under section 1113(a)(3) of the [ESEA]."

Analysis:

- Section 1113(a)(3) of the ESEA currently states that if, in allocating Title I-Part A funds, there are insufficient funds to serve all eligible school attendance areas, an LEA must annually rank the eligible schools in which the concentration of children from low-income families exceeds 75 percent from highest to lowest according to the percentage of children from low-income families. Then the LEAs must serve eligible schools in rank order.
- Current ED-Flex authority is silent on granting waivers regarding Title I eligibility and ED has approved waivers of the rank-order requirements for eligibility in the past.
- The Senate provision explicitly prohibits any waivers of the Title I rank-order requirements. Title I eligibility must remain targeted on high poverty schools.
- The effect of the proposed House provision is to allow waivers to permit additional schools to be eligible for Title I funds if they are marginally below the necessary poverty level. Although this would make some additional schools eligible for Title I funds, and thus is not as targeted as the Senate provision or the actual Title I statute, it is acceptable because it is better than current law and still targets on high-poverty schools (they have to be within 5% of the lowest poverty level).
- Because current ED-Flex authority is silent on this issue, both of these new provisions are more restrictive than current law. The Senate version would forbid any waivers affecting Title I eligibility and the House version would at least minimize the damage a waiver could do to Title I targeting, keeping Title I funds focused on high-poverty schools.

Administration's Position: Support both of these provisions. Both of them target Title I funds on high-poverty schools more directly than our current waiver authority.

Accountability Provisions in ED-Flex Proposed Bills

House and Senate Provisions:

State Eligibility: The House bill requires the State to have already "developed and implemented content standards and interim assessments and made substantial progress...toward developing and implementing performance standards and final aligned assessments, and toward having local educational agencies in the State produce [school performance] profiles." The House bill refers to disaggregation of data only by reference, not as an explicit requirement. The Senate bill requires only "substantial progress... toward developing and implementing the standards and assessments, and toward having local educational agencies in the State produce the profiles." The Senate bill would require the State to have implemented the requirements in section 1111(b) of the ESEA relating to the disaggregation of data.

The House bill requires an eligible State to hold LEAs and schools accountable for meeting the educational goals described in their local applications for a waiver. The Senate bill requires States to hold LEAs and schools accountable for meeting educational goals in the abstract and "for engaging in the technical assistance and corrective actions consistent with section 1116 of the [ESEA], for the local educational agencies and schools that do not make adequate yearly progress."

Analysis: Both bills make eligibility turn on the extent of implementation of Title I accountability systems, and both bills offer an alternative to States of either essentially complete or partial implementation:

- Under the essentially complete option, the Senate version is somewhat stronger because it explicitly requires the State to have implemented the requirements in section 1111(b) relating to the disaggregation of data whereas the House version does not specifically mention disaggregation of data, but does reference it.
- With respect to the partial implementation alternative, the House bill appears to be the more rigorous since it requires States to have implemented content standards and interim assessments and made substantial progress toward developing and implementing the next steps of performance standards, assessments and school performance profiles. The Senate version only

requires substantial progress be made in all of these areas.

- With respect to holding LEAs and schools accountable for meeting educational goals, the House version is more rigorous in that it requires that the specific goals in the waiver application be met.

Overall, the House accountability provisions for State eligibility are stronger.

Administration's Position. We prefer the more rigorous requirements in the House version as they apply to implementation of standards and assessments under Title I of the ESEA and for holding LEAs and schools accountable for meeting educational goals.

State Application. The House bill requires the State's ED-Flex plan to include a "description of specific educational objectives the State intends to meet under [the] plan" and a description of how the State "will measure the progress of local educational agencies in meeting [those] specific goals." The Senate bill instead requires the State to include in its flexibility plan a description of how the plan is "consistent with and will assist in implementing the State comprehensive reform plan" and if a State doesn't have such a plan, "a description of how the educational flexibility plan is coordinated with activities described in section 1111(b) of the [ESEA]." The Senate bill also requires a description of how the SEA will evaluate the performance of students in LEAs and schools affected by waivers "consistent with the requirements of title I of the [ESEA]."

Analysis: Both bills have pretty rigorous application standards:

- The Senate version requires the State applications to reference State comprehensive plans or Section 1111(b) of ESEA (Title I standards and assessments).
- The House bill, but not the Senate, requires States to describe specific educational objectives in their applications. Although it does not make reference to the State comprehensive plan, the requirement that the applications specify the specific objectives does have merit in that it would facilitate monitoring and accountability by the State and others such as the Federal government and interest groups.
- The House version appears more focused on local requirements and specifically on progress. It requires States to measure local progress by using the local applicants' objectives, as defined by the section of the bill requiring local applicants to set specific and measurable goals for schools and groups of students affected by waivers. The Senate version requires States to evaluate the performance of local applicants and students affected by

waivers in general, not defined by local applications.

Administration Position: We prefer the Senate version that requires the State applications to reference State comprehensive plans and have made reference to that in our letter. [We prefer the House version of the latter provision that requires a focus on local progress rather than just on performance, but we are silent on that in the letter. The House Majority Staff Offer indicates that the House version will be the one supported.]

Renewal of ED Flex Status. To determine whether a State's ED Flex status under the new law should be extended, the House bill would require the Secretary to determine whether the SEA has made "measurable" progress toward achieving the objectives described in the application and whether the SEA can demonstrate that its LEAs and schools have made "measurable" progress in achieving the results describe in the application. The Senate bill would require that the Secretary review generally the progress (absent the word "measurable") of the SEA, LEA, or school towards meeting the goals set in the applications.

Analysis: The House version is more rigorous and it requires measurable progress.

Administration Position. We support the House version and want the words "measurable progress" to remain in the provision.

The Education Flexibility Partnership Act of 1999

House Majority Staff Offer

Education - EFLex

H.R. 800	Senate Amendment	Notes
This Act may be cited as the 'Education Flexibility Partnership Act of 1999'.	This Act may be cited as the 'Education Flexibility Partnership Act of 1999'.	1. Both the House bill and the Senate amendment are identical in this section.
<p>SEC. 2. FINDINGS. Congress makes the following findings:</p> <p>(1) States differ substantially in demographics, in school governance, and in school finance and funding. The administrative and funding mechanisms that help schools in 1 State improve may not prove successful in other States.</p> <p>(2) Although the Elementary and Secondary Education Act of 1965 and other Federal education statutes afford flexibility to State and local educational agencies in implementing Federal programs, certain requirements of Federal education statutes or regulations may impede local efforts to reform and improve education.</p> <p>(3) By granting waivers of certain statutory and regulatory requirements, the Federal Government can remove impediments for local educational agencies in implementing education reforms and raising the achievement levels of all children.</p> <p>(4) State educational agencies are closer to local school systems, implement statewide education reforms with both Federal and State funds, and are responsible for maintaining accountability for local activities consistent with State standards and assessment systems. Therefore, State educational agencies are often in the best position to align waivers of Federal and State requirements with State and local initiatives.</p> <p>(5) The Education Flexibility Partnership Demonstration Act allows State educational agencies the flexibility to waive certain Federal requirements, along with related State requirements, but allows only 12 States to qualify for such waivers.</p>	<p>SEC. 2. FINDINGS. Congress makes the following findings:</p> <p>(1) States differ substantially in demographics, in school governance, and in school finance and funding. The administrative and funding mechanisms that help schools in 1 State improve may not prove successful in other States.</p> <p>(2) Although the Elementary and Secondary Education Act of 1965 and other Federal education statutes afford flexibility to State and local educational agencies in implementing Federal programs, certain requirements of Federal education statutes or regulations may impede local efforts to reform and improve education.</p> <p>(3) By granting waivers of certain statutory and regulatory requirements, the Federal Government can remove impediments for local educational agencies in implementing educational reforms and raising the achievement levels of all children.</p> <p>(4) State educational agencies are closer to local school systems, implement statewide educational reforms with both Federal and State funds, and are responsible for maintaining accountability for local activities consistent with State standards and assessment systems. Therefore, State educational agencies are often in the best position to align waivers of Federal and State requirements with State and local initiatives.</p> <p>(5) The Education Flexibility Partnership Demonstration Act allows State educational agencies the flexibility to waive certain Federal requirements, along with related State requirements, but allows only 12 States to qualify for such waivers.</p>	<p>2. The findings are identical in both the House bill and the Senate amendment except for finding (6). See note 1.</p>

H.R. 800	Senate Amendment	Notes
<p>(6) Expansion of waiver authority will allow for the waiver of statutory and regulatory requirements that impede implementation of State and local educational improvement plans, or that unnecessarily burden program administration, while maintaining the intent and purposes of affected programs, such as the important focus on improving math and science performance under title II of the Elementary and Secondary Education Act of 1965, (Dwight D. Eisenhower Professional Development Program), and maintaining such fundamental requirements as those relating to civil rights, educational equity, and accountability.</p> <p>(7) To achieve the State goals for the education of children in the State, the focus must be on results in raising the achievement of all students, not process.</p>	<p>(6) Expansion of waiver authority will allow for the waiver of statutory and regulatory requirements that impede implementation of State and local educational improvement plans, or that unnecessarily burden program administration, while maintaining the intent and purposes of affected programs, and maintaining such fundamental requirements as those relating to civil rights, educational equity, and accountability.</p> <p>(7) To achieve the State goals for the education of children in the State, the focus must be on results in raising the achievement of all students, not process.</p>	<p>3. The House bill, but not the Senate amendment, mentions the important focus on math and science in the Eisenhower Professional Development Program as an example of the intent and purposes of programs to be maintained under Ed-Flex. <i>SR</i></p>
<p>Sec. 3 DEFINITIONS. In this Act:</p> <p>(1) ATTENDANCE AREA- The term 'attendance area' has the meaning given the term 'school attendance area' in section 1133(a)(2)(A) of the Elementary and Secondary Education Act of 1965.</p> <p>(2) ED-FLEX PARTNERSHIP STATE- The term 'Ed-Flex Partnership State' means an eligible State designated by the Secretary under section 4(a)(1)(B).</p> <p>(3) LOCAL EDUCATIONAL AGENCY; STATE EDUCATIONAL AGENCY- The terms 'local educational agency' and 'State educational agency' have the meaning given such terms in section 14101 of the Elementary and Secondary Education Act of 1965.</p> <p>(4) SECRETARY- The term 'Secretary' means the Secretary of Education.</p> <p>(5) STATE- The term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.</p>	<p>Sec. 3 DEFINITIONS In this Act:</p> <p>(1) LOCAL EDUCATIONAL AGENCY; STATE EDUCATIONAL AGENCY- The terms 'local educational agency' and 'State educational agency' have the meanings given such terms in section 14101 of the Elementary and Secondary Education Act of 1965.</p> <p>(2) OUTLYING AREA- The term 'outlying area' means Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.</p> <p>(3) SECRETARY- The term 'Secretary' means the Secretary of Education.</p> <p>(4) STATE- The term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each outlying area.</p>	<p>4. The House bill, but not the Senate amendment, contains two additional definitions. Those are: "attendance area" because this term is mentioned in (e)(F), which defines an unauthorized Title I school eligibility waiver and "Ed-Flex Partnership State" in order to make clear that the term refers to an eligible state. The Senate amendment, but not the House bill includes a definition of "outlying areas". The House bill refers to this definition under ESEA.</p> <p><i>Attendance Area: HR.</i> <i>Ed-Flex Partnership State: SR.</i> <i>Outlying Areas: SR.</i></p>

H.R. 800	Senate Amendment	Notes
<p>Sec. 4 EDUCATION FLEXIBILITY PARTNERSHIP</p> <p>(a) EDUCATION FLEXIBILITY PROGRAM-</p> <p>(1) PROGRAM AUTHORIZED-</p> <p>(A) IN GENERAL- The Secretary may carry out an education flexibility program under which the Secretary authorizes a State educational agency that serves an eligible State to waive statutory or regulatory requirements applicable to 1 or more programs or Acts described in subsection (b), other than requirements described in subsection (c), for the State educational agency or any local educational agency or school within the State.</p> <p>(B) DESIGNATION- The Secretary shall designate each eligible State participating in the program described in subparagraph (A) to be an Ed-Flex Partnership State.</p> <p>(2) ELIGIBLE STATE- For the purpose of this subsection the term 'eligible State' means a State that--</p> <p>(A)(i) has--</p> <p>(I) developed and implemented the challenging State content standards, challenging State student performance standards, and aligned assessments described in section 1111(b) of the Elementary and Secondary Education Act of 1965, and for which local educational agencies in the State are producing the individual school performance profiles required by section 1116(a) of such Act; or</p> <p>(II) developed and implemented content standards and interim assessments and made substantial progress, as determined by the Secretary, toward developing and implementing performance standards and final aligned assessments, and toward having local educational agencies in the State produce the profiles, described in subclause (I); and</p>	<p>Sec. 4 EDUCATION FLEXIBILITY PARTNERSHIP</p> <p>(a) EDUCATION FLEXIBILITY PROGRAM-</p> <p>(1) PROGRAM AUTHORIZED-</p> <p>(A) IN GENERAL- The Secretary may carry out an education flexibility program under which the Secretary authorizes a State educational agency that serves an eligible State to waive statutory or regulatory requirements applicable to 1 or more programs or Acts described in subsection (b), other than requirements described in subsection (c), for any local educational agency or school within the State.</p> <p>(B) DESIGNATION- Each eligible State participating in the program described in subparagraph (A) shall be known as an 'Ed-Flex Partnership State'.</p> <p>(2) ELIGIBLE STATE- For the purpose of this subsection the term 'eligible State' means a State that--</p> <p>(A)(i) has--</p> <p>(I) developed and implemented the challenging State content standards, challenging State student performance standards, and aligned assessments described in section 1111(b) of the Elementary and Secondary Education Act of 1965, including the requirements of that section relating to disaggregation of data, and for which local educational agencies in the State are producing the individual school performance profiles required by section 1116(a) of such Act; or</p> <p>(II) made substantial progress, as determined by the Secretary, toward developing and implementing the standards and assessments, and toward having local educational agencies in the State produce the profiles, described in subclause (I); and</p>	<p>EDUCATION FLEXIBILITY PARTNERSHIP</p> <p>5. The Senate amendment, but not the House, in Part (a)(1)(A) does not permit the State to waive requirements on itself. SR.</p> <p>6. The House bill requires a state to have implemented more of their Title I plan than the Senate amendment. See Notes 7 and 8. The House bill and the Senate amendment differ in how they measure the performance of local applicants. See Note 9.</p> <p>7. The Senate amendment but not the House bill, includes the phrase, "including the requirements of that section relating to disaggregation of data." The House bill refers to disaggregation of data by reference. HR.</p> <p>8. The House bill requires content standards and interim assessments to be in place, in addition to having made substantial progress towards developing and implementing performance standards and final aligned assessments. The Senate amendment requires substantial progress for content and performance standards as well as final aligned assessments. SR.</p>

H.R. 800	Senate Amendment	Notes
<p>(ii) holds local educational agencies and schools accountable for meeting the educational goals described in the local applications submitted under paragraph (4); and</p> <p>(B) waives State statutory or regulatory requirements relating to education while holding local educational agencies or schools within the State that are affected by such waivers accountable for the performance of the students who are affected by such waivers.</p>	<p>(ii) holds local educational agencies and schools accountable for meeting educational goals and for engaging in the technical assistance and corrective actions consistent with section 1116 of the Elementary and Secondary Education Act of 1965, for the local educational agencies and schools that do not make adequate yearly progress as described in section 1111(b) of that Act; and</p> <p>(B) waives State statutory or regulatory requirements relating to education while holding local educational agencies or schools within the State that are affected by such waivers accountable for the performance of the students who are affected by such waivers.</p>	<p>9. The House bill requires states to hold LEAs and schools accountable for meeting goals listed in waiver applications to be eligible. The Senate amendment has an additional requirement that states are implementing corrective action measures under Title I for schools that fail to make adequate yearly progress.</p> <p>HR.</p>
<p>(3) STATE APPLICATION</p> <p>(A) IN GENERAL- Each State educational agency desiring to participate in the education flexibility program under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Each such application shall demonstrate that the eligible State has adopted an education flexibility plan for the State that includes--</p> <p>(i) a description of the process the State educational agency will use to evaluate applications from local educational agencies or schools requesting waivers of--</p> <p>(I) Federal statutory or regulatory requirements as described in paragraph (1)(A); and</p> <p>(II) State statutory or regulatory requirements relating to education; and</p> <p>(ii) a detailed description of the State statutory and regulatory requirements relating to education that the State educational agency will waive;</p> <p>(iii) a description of specific educational objectives the State intends to meet under such a plan;</p>	<p>(3) STATE APPLICATION</p> <p>(A) IN GENERAL- Each State educational agency desiring to participate in the education flexibility program under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Each such application shall demonstrate that the eligible State has adopted an educational flexibility plan for the State that includes--</p> <p>(i) a description of the process the State educational agency will use to evaluate applications from local educational agencies or schools requesting waivers of--</p> <p>(I) Federal statutory or regulatory requirements as described in paragraph (1)(A); and</p> <p>(II) State statutory or regulatory requirements relating to education;</p> <p>(ii) a detailed description of the State statutory and regulatory requirements relating to education that the State educational agency will waive;</p>	<p>10. The House bill and Senate amendment differ in how States are to measure and set objectives. See Notes 11-14.</p> <p>11. The House bill, but not the Senate amendment, requires states to describe specific objectives in their application. SR.</p>

H.R. 800	Senate Amendment	Notes
<p>(iv) a description of the process by which the State will measure the progress of local educational agencies in meeting specific goals described in subsection (a)(4)(A)(iii); and</p> <p>[notice and comment]</p> <p>(v) an assurance that, not less than 30 days prior to waiving any Federal statutory or regulatory requirement, or in accordance with State law, the State educational agency shall give public notice in widely-read publications, such as large circulation newspapers and community newspapers, of its intent to grant such a waiver, a description of the Federal statutory or regulatory requirements that the State educational agency proposes to waive, any improved performance of students that is expected to result from the waiver, and the State official--</p> <p>(I) to whom comments on the proposed waiver may be sent by interested individuals and organizations; and</p> <p>(II) who will make all the comments received available for review by any member of the public.</p>	<p>(ii) a description of how the educational flexibility plan is consistent with and will assist in implementing the State comprehensive reform plan or, if a State does not have a comprehensive reform plan, a description of how the educational flexibility plan is coordinated with activities described in section 1111(b) of the Elementary and Secondary Education Act of 1965;</p> <p>(v) a description of how the State educational agency will evaluate, (consistent with the requirements of title I of the Elementary and Secondary Education Act of 1965), the performance of students in the schools and local educational agencies affected by the waivers.</p> <p>[notice and comment]</p> <p>(iv) a description of how the State educational agency will meet the requirements of paragraph (8); and</p>	<p>12. The Senate amendment, but not the House bill requires state applications to reference State comprehensive plans or Section 1111(b) of ESEA (Title I standards and assessments). SR.</p> <p>13. The House bill, but not the Senate amendment, requires local progress to be measured by using the local applicants' objectives, as defined by the section of the bill (a)(4)(A)(iii) requiring local applicants to set specific and measurable goals for schools and groups of students affected by waivers. The Senate amendment, but not the House bill, requires States to evaluate the performance of local applicants and students affected by waivers in general, not defined by local applications. HR.</p> <p>14. Both the House bill and the Senate amendment require States to describe how they will notify the public of waivers granted. The House bill requires States to provide assurances that it will provide notice with a minimum requirement of 30 days or in accordance with state law. The Senate amendment requires "adequate and efficient" notice and opportunity for comment. See note 18 for local comment and notice. HR.</p>
<p>(B) APPROVAL AND CONSIDERATIONS- The Secretary may approve an application described in subparagraph (A) only if the Secretary determines that such application demonstrates substantial promise of assisting the State educational agency and affected local educational agencies and schools within such State in carrying out comprehensive education reform, after considering--</p>	<p>(B) APPROVAL AND CONSIDERATIONS- The Secretary may approve an application described in subparagraph (A) only if the Secretary determines that such application demonstrates substantial promise of assisting the State educational agency and affected local educational agencies and schools within the State in carrying out comprehensive educational reform, after considering--</p> <p>(i) the eligibility of the State as described in paragraph (2);</p>	<p>15. The Senate amendment, but not the House bill, explicitly requires the Secretary to consider a state's eligibility for Ed-Flex in approving their application. The House bill, but not the Senate amendment requires the Secretary to evaluate their objectives according to their specificity and their connection to students, schools and districts. HR.</p>

H.R. 800	Senate Amendment	Notes
<p>(i) the comprehensiveness and quality of the education flexibility plan described in subparagraph (A);</p> <p>(ii) the ability of such plan to ensure accountability for the activities and goals described in such plan;</p> <p>(iii) the degree to which the State's objectives described in subparagraph (A)(iii)—</p> <p>(I) are specific and measurable; and</p> <p>(II) measure the performance of local educational agencies or schools and specific groups of students affected by waivers;</p> <p>(iv) the significance of the State statutory or regulatory requirements relating to education that will be waived; and</p> <p>(v) the quality of the State educational agency's process for approving applications for waivers of Federal statutory or regulatory requirements described in paragraph (1)(A) and for monitoring and evaluating the results of such waivers.</p>	<p>(ii) the comprehensiveness and quality of the educational flexibility plan described in subparagraph (A);</p> <p>(iii) the ability of such plan to ensure accountability for the activities and goals described in such plan;</p> <p>(iv) the significance of the State statutory or regulatory requirements relating to education that will be waived; and</p> <p>(v) the quality of the State educational agency's process for approving applications for waivers of Federal statutory or regulatory requirements as described in paragraph (1)(A) and for monitoring and evaluating the results of such waivers.</p>	
<p>(4) LOCAL APPLICATION-</p> <p>(A) IN GENERAL- Each local educational agency or school requesting a waiver of a Federal statutory or regulatory requirement described in paragraph (1)(A) and any relevant State statutory or regulatory requirement from a State educational agency shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may reasonably require. Each such application shall—</p> <p>(i) indicate each Federal program affected and the statutory or regulatory requirement that will be waived;</p> <p>(ii) describe the purposes and overall expected results of waiving each such requirement;</p> <p>(iii) describe, for each school year, specific, measurable, educational goals for each local educational agency, school, and group of students affected by the proposed waiver;</p>	<p>(4) LOCAL APPLICATION-</p> <p>(A) IN GENERAL- Each local educational agency or school requesting a waiver of a Federal statutory or regulatory requirement as described in paragraph (1)(A) and any relevant State statutory or regulatory requirement from a State educational agency shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may reasonably require. Each such application shall—</p> <p>(i) indicate each Federal program affected and the statutory or regulatory requirement that will be waived;</p> <p>(ii) describe the purposes and overall expected results of waiving each such requirement;</p> <p>(iii) describe for each school year specific, measurable, and educational goals for each local educational agency or school affected by the proposed waiver;</p>	<p>16. Both the House bill and the Senate amendment are identical with the exception of (ii) and (v). See notes 17 and 18.</p> <p>17. The House bill, but not the Senate amendment, requires goals for each group of students affected by a proposed waiver, in addition to the LEA or school. <i>SR.</i></p>

H.R. 800	Senate Amendment	Notes
<p>(iv) explain why the waiver will assist the local educational agency or school in meeting such goals; and</p> <p>(section on public notice)</p> <p>(v) provide an assurance that, not less than 30 days prior to submitting the application to the State educational agency for a waiver under this section, or in accordance with State law, the local educational agency or school shall give public notice in widely-read publications, such as large circulation newspapers and community newspapers, of its intent to request the waiver, a description of the Federal statutory or regulatory requirements that will be waived, any improved performance of students that is expected to result from the waiver, and the name and address of the local educational agency official--</p> <p>(I) to whom comments on the proposed waiver may be sent by interested individuals and organizations; and</p> <p>(II) who will make all the comments received available for review by any member of the public.</p>	<p>(iv) explain why the waiver will assist the local educational agency or school in reaching such goals; and</p> <p>(section on public notice)</p> <p>(v) in the case of an application from a local educational agency, describe how the local educational agency will meet the requirements of paragraph (8).</p>	<p>18. Local public notice and comment: See Note 14. <i>HR.</i></p>
<p>(B) EVALUATION OF APPLICATIONS- A State educational agency shall evaluate an application submitted under subparagraph (A) in accordance with the State's education flexibility plan described in paragraph (3)(A).</p> <p>(C) APPROVAL- A State educational agency shall not approve an application for a waiver under this paragraph unless--</p> <p>(i) the local educational agency or school requesting such waiver has developed a local reform plan that is applicable to such agency or school, respectively;</p> <p>(ii) the waiver of Federal statutory or regulatory requirements described in paragraph (1)(A) will assist the local educational agency or school in meeting its educational goals; and</p> <p>(iii) the State educational agency is satisfied that the underlying purposes of the statutory requirements of each program or Act for which a waiver is granted continue to be met.</p>	<p>(B) EVALUATION OF APPLICATIONS- A State educational agency shall evaluate an application submitted under subparagraph (A) in accordance with the State's educational flexibility plan described in paragraph (3)(A).</p> <p>(C) APPROVAL- A State educational agency shall not approve an application for a waiver under this paragraph unless--</p> <p>(i) the local educational agency or school requesting such waiver has developed a local reform plan that is applicable to such agency or school, respectively; and</p> <p>(ii) the waiver of Federal statutory or regulatory requirements as described in paragraph (1)(A) will assist the local educational agency or school in reaching its educational goals, particularly goals with respect to school and student performance.</p>	<p>19. Both the House bill and the Senate amendment are identical.</p> <p>20. The Senate amendment stipulates that the Secretary should consider how a waiver will help improve school and student performance when evaluating applications. The House bill requires the Secretary to be satisfied that the State will continue to meet the underlying purposes of the statutes included in this legislation. <i>HR/SR with an amendment taking both provisions.</i></p>

H.R. 800	Senate Amendment	Notes
<p>(SEA termination of Local Waivers)</p> <p>(D) TERMINATION- If a local educational agency or school that receives a waiver under this section experiences a statistically significant decrease in the level of performance in achieving the objectives described in paragraph (3)(A)(iii) or goals in paragraph (4)(A)(iii) for 2 consecutive years, the State educational agency shall, after notice and an opportunity for a hearing to explain such decrease, terminate the waiver authority granted to such local educational agency or school. If, after notice and an opportunity for a hearing, the State educational agency determines that the decrease in performance was justified due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency or school, the waiver shall not be terminated.</p>	<p>(SEA termination of Local Waivers)</p> <p>[(5) MONITORING AND PERFORMANCE REVIEW]</p> <p>(B) PERFORMANCE REVIEW- The State educational agency shall annually review the performance of any local educational agency or school granted a waiver of Federal statutory or regulatory requirements as described in paragraph (1)(A) in accordance with the evaluation requirement described in paragraph (3)(A)(v), and shall terminate any waiver granted to the local educational agency or school if the State educational agency determines, after notice and opportunity for hearing, that the local educational agency or school's performance with respect to meeting the accountability requirement described in paragraph (2)(B) and the goals described in paragraph (4)(A)(iii) has been inadequate to justify continuation of such waiver.</p>	<p>21. The House bill requires a statistically significant decrease for two consecutive years until waivers can be terminated. The Senate amendment requires termination if performance has been "inadequate" to justify continuing the waiver. <i>HR with an amendment inserting "decrease for two consecutive years" parameter from House language.</i></p>
<p>(S) OVERSIGHT AND REPORTING-</p> <p>(A) IN GENERAL-</p> <p>(i) OVERSIGHT- Each State educational agency participating in the education flexibility program under this section shall annually monitor the activities of local educational agencies and schools receiving waivers under this section. Such monitoring shall include a review of relevant audit, technical assistance, evaluation, and performance reports.</p> <p>(ii) REPORTING- The State educational agency shall submit to the Secretary an annual report on the results of such oversight and its impact on the improvement of education programs.</p> <p>(B) PERFORMANCE DATA-</p> <p>(i) STATE REPORTING- Not later than 2 years after a State is designated as an Ed-Flex Partnership State, each such State shall include, as part of their report to the Secretary under clause (ii) of subparagraph (A), performance data demonstrating the degree to which progress has been made toward meeting the objectives outlined in section 3(A)(iii). The report to the Secretary shall, when applicable, include--</p>	<p>(S) MONITORING AND PERFORMANCE REVIEW-</p> <p>(A) MONITORING- Each State educational agency participating in the program under this section shall annually monitor the activities of local educational agencies and schools receiving waivers under this section and shall submit an annual report regarding such monitoring to the Secretary.</p>	<p>22. The House bill entitles this section OVERSIGHT AND REPORTING. The Senate amendment entitles this section "MONITORING AND PERFORMANCE REVIEW." <i>SR</i></p> <p>23. The House bill, but not the Senate amendment, stipulates that monitoring "shall include a review of relevant audit, technical assistance, evaluation, and performance reports." Both the House bill and the Senate amendment require states to submit an annual report, but the House bill states this in (ii) and the Senate amendment states this in (i). <i>SR</i>.</p> <p>24. The House bill and the Senate amendment require states to submit performance data. However, the House bill, but not the Senate amendment, requires States to submit performance data after two years of being an Ed-Flex state. <i>SR</i>.</p>

H.R. 800	Senate Amendment	Notes
<p>(I) information on the total number of waivers granted, including the number of waivers granted for each type of waiver.</p> <p>(II) information describing the types and characteristics of waivers granted and their relationship to the progress of local educational agencies and schools toward meeting their performance objectives; and</p> <p>(III) an assurance from State program managers that the data used to measure performance of the education flexibility program under this section are reliable, complete, and accurate, as defined by the State, or a description of a plan for improving the reliability, completeness, and accuracy of such data.</p> <p>(ii) SECRETARY REPORT- The Secretary shall--</p> <p>(I) make each State report available to Congress and the general public;</p> <p>(II) submit to Congress a report, on a timely basis, that addresses the impact that the education flexibility program under this section has had with regard to performance objectives described in paragraph (j)(A)(iii).</p> <p>The Secretary shall include in the report to Congress an assurance that the data used to measure performance of the education flexibility program under this section are complete, reliable, and accurate or a plan for improving the reliability, completeness, and accuracy of such data.</p>	<p>[SEC. 5. PROGRESS REPORTS.]</p> <p>The Secretary, not later than 1 year after the date of enactment of this Act and biennially thereafter, shall submit to Congress a report that describes--</p> <p>(1) the Federal statutory and regulatory requirements for which waiver authority is granted to State educational agencies under this Act;</p> <p>(2) the State statutory and regulatory requirements that are waived by State educational agencies under this Act;</p> <p>(3) the effect of the waivers upon implementation of State and local educational reforms; and</p> <p>(4) the performance of students affected by the waivers.</p>	<p>25. The House bill requires the Secretary to report to Congress on an annual basis the impact of Ed-Flex on performance objectives and to make state reports available to Congress. The Senate amendment requires a report to Congress after the first year and biennially thereafter.</p> <p>In general, the Senate amendment requires the Secretary to report what the House bill prescribes for the states. The Senate amendment in (1) requires the Secretary to describe the federal statutes and regulations for which they have received waiver authority. The House bill but not the Senate amendment specifies the type of information to be reported on waivers granted. The Senate amendment only requires information on waivers of state regulations and statutes. The House bill, but not the Senate amendment requires specific data on types of waivers granted and requires a report on the relationship between the waivers and meeting objectives. The Senate amendment in 3 and 4 requires that they describe "the effect" on implementation of reforms and student performance. [cf. Note 38] <i>Senate recedes with amendment. See Attachment A.</i></p>

H.R. 800	Senate Amendment	Notes
<p>(6) DURATION OF FEDERAL WAIVERS-</p> <p>(A) IN GENERAL- The Secretary shall not approve the application of a State educational agency under paragraph (3) for a period exceeding 5 years, except that the Secretary may extend such period if the Secretary determines that such agency's authority to grant waivers has been effective in enabling such State or affected local educational agencies or schools to carry out their local reform plans.</p> <p>(B) PERFORMANCE REVIEW- Three years after a State is designated an Ed-Flex Partnership State, the Secretary shall--</p> <p>(i) review the performance of any State educational agency in such State that grants waivers of Federal statutory or regulatory requirements described in paragraph (1)(A); and</p> <p>(ii) terminate such agency's authority to grant such waivers if the Secretary determines, after notice and opportunity for a hearing, that such agency has failed to make measurable progress in meeting the objectives outlined in paragraph (3)(A)(iii) to justify continuation of such authority.</p>	<p>(6) DURATION OF FEDERAL WAIVERS-</p> <p>(A) IN GENERAL- The Secretary shall not approve the application of a State educational agency under paragraph (3) for a period exceeding 5 years, except that the Secretary may extend such period if the Secretary determines that such agency's authority to grant waivers has been effective in enabling such State or affected local educational agencies or schools to carry out their local reform plans and to continue to meet the accountability requirement described in subsection (a)(2)(B), and has improved student performance.</p> <p>(B) PERFORMANCE REVIEW- The Secretary shall periodically review the performance of any State educational agency granting waivers of Federal statutory or regulatory requirements as described in paragraph (1)(A) and shall terminate such agency's authority to grant such waivers if the Secretary determines, after notice and opportunity for hearing, that such agency's performance has been inadequate to justify continuation of such authority.</p>	<p>26. The Senate amendment, but not the House bill, requires that states "continue to meet the accountability requirements described in subsection (a)(2)(B), and has improved student performance" in order for authority to be extended. HR.</p> <p>27. The House bill requires that the Secretary review the performance of States after three years of being an Ed-Flex state. The Senate amendment requires the Secretary to review the performance of State "periodically." SR.</p>
<p>(7) AUTHORITY TO ISSUE WAIVERS- Notwithstanding any other provision of law, the Secretary is authorized to carry out the education flexibility program under this subsection for each of the fiscal years 1999 through 2004.</p>	<p>(7) AUTHORITY TO ISSUE WAIVERS- Notwithstanding any other provision of law, the Secretary is authorized to carry out the education flexibility program under this subsection for each of the fiscal years 2000 through 2004.</p>	<p>28. The House bill authorizes this program beginning in FY 1999. The Senate amendment begins this authorization in FY 2000. SR.</p>

H.R. 800	Senate Amendment	Notes
<p>PUBLIC NOTICE AND COMMENT</p> <p>(a)(X)(A) STATE APPLICATION</p> <p>(v) an assurance that, not less than 30 days prior to waiving any Federal statutory or regulatory requirement, or in accordance with State law, the State educational agency shall give public notice in widely-read publications, such as large circulation newspapers and community newspapers, of its intent to grant such a waiver, a description of the Federal statutory or regulatory requirements that the State educational agency proposes to waive, any improved performance of students that is expected to result from the waiver, and the State official--</p> <p>(I) to whom comments on the proposed waiver may be sent by interested individuals and organizations; and</p> <p>(II) who will make all the comments received available for review by any member of the public.</p> <p>(a)(X)(A) LOCAL APPLICATION</p> <p>(v) provide an assurance that, not less than 30 days prior to submitting the application to the State educational agency for a waiver under this section, or in accordance with State law, the local educational agency or school shall give public notice in widely-read publications, such as large circulation newspapers and community newspapers, of its intent to request the waiver, a description of the Federal statutory or regulatory requirements that will be waived, any improved performance of students that is expected to result from the waiver, and the name and address of the local educational agency official--</p> <p>(I) to whom comments on the proposed waiver may be sent by interested individuals and organizations; and</p> <p>(II) who will make all the comments received available for review by any member of the public.</p>	<p>(8) PUBLIC NOTICE AND COMMENT- Each State educational agency granted waiver authority under this section and each local educational agency receiving a waiver under this section shall provide the public adequate and efficient notice of the proposed waiver authority or waiver, consisting of a description of the agency's application for the proposed waiver authority or waiver in a widely read or distributed medium, shall provide the opportunity for parents, educators, and all other interested members of the community to comment regarding the proposed waiver authority or waiver, shall provide that opportunity in accordance with any applicable State law specifying how the comments may be received, and shall submit the comments received with the agency's application to the Secretary or the State educational agency, as appropriate.</p>	<p>29. PUBLIC NOTICE AND COMMENT: See Notes 14 and 18. HR.</p>

H.R. 800	Senate Amendment	Notes
<p>(b) INCLUDED PROGRAMS- The statutory or regulatory requirements referred to in subsection (a)(1)(A) are any such requirements under the following programs or Acts:</p> <p>(1) Title I of the Elementary and Secondary Education Act of 1965.</p> <p>(2) Part B of title II of the Elementary and Secondary Education Act of 1965.</p> <p>(3) Subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965 (other than section 3136 of such Act).</p> <p>(4) Title IV of the Elementary and Secondary Education Act of 1965.</p> <p>(5) Title VI of the Elementary and Secondary Education Act of 1965.</p> <p>(6) Part C of title VII of the Elementary and Secondary Education Act of 1965.</p> <p>(7) The Carl D. Perkins Vocational and Technical Education Act of 1998.</p>	<p>(b) INCLUDED PROGRAMS- The statutory or regulatory requirements referred to in subsection (a)(1)(A) are any such requirements under the following programs or Acts:</p> <p>(1) Title I of the Elementary and Secondary Education Act of 1965 (other than subsections (a) and (c) of section 1116 of such Act).</p> <p>(2) Part B of title II of the Elementary and Secondary Education Act of 1965.</p> <p>(3) Subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965 (other than section 3136 of such Act).</p> <p>(4) Title IV of the Elementary and Secondary Education Act of 1965.</p> <p>(5) Title VI of the Elementary and Secondary Education Act of 1965.</p> <p>(6) Part C of title VII of the Elementary and Secondary Education Act of 1965.</p> <p>(7) The Carl D. Perkins Vocational and Technical Education Act of 1998.</p>	<p>30. The House bill and the Senate amendment are identical except that in (1) the Senate amendment excludes the Local Review and School Improvement sections of Title I. SR.</p>
<p>(c) WAIVERS NOT AUTHORIZED- The Secretary may not waive any statutory or regulatory requirement of the programs or Acts authorized to be waived under subsection (a)(1)(A)--</p> <p>(1) relating to--</p> <p>(A) maintenance of effort;</p> <p>(B) comparability of services;</p> <p>(C) the equitable participation of students and professional staff in private schools;</p> <p>(D) parental participation and involvement;</p>	<p>(c) WAIVERS NOT AUTHORIZED- The Secretary and the State educational agency may not waive any statutory or regulatory requirement of the programs or Acts authorized to be waived under subsection (a)(1)(A)--</p> <p>(1) relating to--</p> <p>(A) maintenance of effort;</p> <p>(B) comparability of services;</p> <p>(C) the equitable participation of students and professional staff in private schools;</p> <p>(D) parental participation and involvement;</p>	<p>31. The Senate amendment specifies that the Secretary and the State may not waive these provisions. The House bill only addresses the Secretary. HR.</p>

H.R. 800	Senate Amendment	Notes
<p>(E) the distribution of funds to States or to local educational agencies;</p> <p>(F) the selection of schools to participate in part A of title I of the Elementary and Secondary Education Act of 1965, except that a State educational agency may grant waivers to allow schools to participate in part A of title I of such Act if the percentage of children from low-income families in the attendance area of such school or who actually attend such school is within 5 percentage points of the lowest percentage of such children for any school in the local educational agency that meets the requirements of section 1113 of the Act;</p> <p>(G) use of Federal funds to supplement, not supplant, non-Federal funds; and</p> <p>(H) applicable civil rights requirements; and</p> <p>(2) unless the underlying purposes of the statutory requirements of each program or Act for which a waiver is granted continue to be met to the satisfaction of the Secretary.</p>	<p>(E) the distribution of funds to States or to local educational agencies;</p> <p>(F) serving eligible school attendance areas in rank order under section 1113(a)(3) of the Elementary and Secondary Education Act of 1965;</p> <p>(G) use of Federal funds to supplement, not supplant, non-Federal funds; and</p> <p>(H) applicable civil rights requirements; and</p> <p>(2) unless the underlying purposes of the statutory requirements of each program or Act for which a waiver is granted continue to be met to the satisfaction of the Secretary.</p>	<p>32. The House bill prohibits Title I school eligibility waivers unless they are marginally below the necessary poverty level. The Senate amendment prohibits waivers of Title I rank-order requirements for schools with more than 75% poverty. <i>HR/SR. Striking both provisions</i></p>
<p>(grandfather provisions for current Ed-Flex States) (d) APPLICATION-</p> <p>(1) IN GENERAL- Except as provided in paragraphs (2) and (3), this Act shall not apply to a State educational agency that has been granted waiver authority under the following provisions of law:</p> <p>(A) Section 311(e) of the Goals 2000: Educate America Act.</p> <p>(B) The proviso referring to such section 311(e) under the heading 'EDUCATION REFORM' in the Department of Education Appropriations Act, 1996 (Public Law 104-134; 110 Stat.1321-229).</p>	<p>(grandfather provisions for current Ed-Flex States) (d) CONTINUING ELIGIBILITY-</p> <p>(1) IN GENERAL- Each State educational agency that is granted waiver authority under the provisions of law described in paragraph (2) shall be eligible to continue the waiver authority under the terms and conditions of the provisions of law as the provisions of law are in effect on the date of enactment of this Act.</p> <p>(2) PROVISIONS OF LAW- The provisions of law referred to in paragraph (1) are as follows:</p> <p>(A) Section 311(e) of the Goals 2000: Educate America Act.</p> <p>(B) The proviso referring to such section 311(e) under the heading 'education reform' in the Department of Education Appropriations Act, 1996 (Public Law 104-134; 110 Stat.1321-229).</p>	<p>33. The House bill protects the authority of current Ed-Flex states by stating that this Act does not apply to them until they apply to renew their authority. The Senate amendment permanently exempts existing Ed-Flex states from being affected by this statute. <i>SR</i></p>

H.R. 800	Senate Amendment	Notes
<p>(2) EXCEPTION- If a State educational agency that has been granted waiver authority, pursuant to paragraph (1)(A) or (B), applies to the Secretary to extend such authority, the provisions of this Act, except subsection (e)(1), shall apply to such agency.</p> <p>(1) EFFECTIVE DATE FOR EXISTING ED-FLEX PROGRAMS- This Act shall apply to a State educational agency described in paragraph (2) beginning on the date that such an extension is granted.</p>		
<p>(e) ACCOUNTABILITY-</p> <p>(1) EVALUATION FOR ED-FLEX PARTNERSHIP STATES- In deciding whether to extend a request for a State educational agency's authority to issue waivers under this section, the Secretary shall review the progress of the State educational agency to determine if such agency--</p> <p>(A) makes measurable progress toward achieving the objectives described in the application submitted pursuant to subsection (a)(3)(A)(iii); and</p> <p>(B) demonstrates that local educational agencies or schools affected by such waiver or authority have made measurable progress toward achieving the desired results described in the application submitted pursuant to subsection (a)(4)(A)(iii).</p> <p>(2) EVALUATION FOR EXISTING ED-FLEX PROGRAMS- In deciding whether to extend a request for a State educational agency described in subsection (d)(2) to issue waivers under this section, the Secretary shall review the progress of the agency in achieving the objectives set forth in the application submitted pursuant to subsection (a)(2)(B)(iii) of the Goals 2000: Educate America Act.</p>	<p>(e) ACCOUNTABILITY- In deciding whether to extend a request for a State educational agency's authority to issue waivers under this section, the Secretary shall review the progress of the State education agency, local educational agency, or school affected by such waiver or authority to determine if such agency or school has made progress toward achieving the desired results and goals described in the application submitted pursuant to clauses (ii) and (iii) of subsection (a)(4)(A), respectively.</p>	<p>34. The House bill stipulates when renewing Ed-Flex Authority, the Secretary must determine whether SEAs have made measurable progress in accordance with their measurable objectives, as well as whether SEAs demonstrate that LEAs or schools have made measurable progress. The House bill also exempts current Ed-Flex states (see Note 33). The Senate amendment requires the Secretary to review generally the progress of those affected by Ed-Flex authority or waivers towards meeting goals set in local applications. <i>Senate recedes to House with an amendment striking "measurable" in (A).</i></p> <p>35. The House bill, but not the Senate amendment, clarifies that when current Ed-Flex states apply to renew their authority, their progress should be measured in accordance with the terms under which they were granted their authority. However, when their authority expires and they receive renewed authority this law will apply to them. <i>SR.</i></p>
<p>(f) PUBLICATION- A notice of the Secretary's decision to authorize State educational agencies to issue waivers under this section shall be published in the Federal Register and the Secretary shall provide for the dissemination of such notice to State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, other interested parties, and the public.</p>	<p>(f) PUBLICATION- A notice of the Secretary's decision to authorize State educational agencies to issue waivers under this section, including a description of the rationale the Secretary used to approve applications under subsection (a)(3)(B), shall be published in the Federal Register and the Secretary shall provide for the dissemination of such notice to State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, other interested parties, and the public.</p>	<p>36. The Senate amendment, but not the House bill, requires the Secretary to include the rationale for granting a state Ed-Flex authority when publishing notice in the Register. <i>HR.</i></p>

H.R. 800	Senate Amendment	Notes
(g) EFFECTIVE DATE- This Act shall be effective during the period beginning on the date of the enactment of this Act and ending on the date of the enactment of an Act (enacted after the date of the enactment of this Act) that reauthorizes the Elementary and Secondary Education Act of 1965 in its entirety.		37. The House bill, but not the Senate amendment, sunsets this law when ESEA reauthorization is enacted. <i>SR.</i>

H.R. 860	Senate Amendment	Notes
	<p>SEC. 6. FLEXIBILITY TO DESIGN CLASS SIZE REDUCTION PROGRAMS.</p> <p>(a) FINDINGS- Congress finds that if part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.) were fully funded, local educational agencies and schools would have the flexibility in their budgets to design class size reduction programs, or any other programs deemed appropriate by the local educational agencies and schools that best address their unique community needs and improve student performance.</p> <p>(b) AMENDMENT- Section 307 of the Department of Education Appropriations Act, 1999, is amended by adding after subsection (g) the following:</p> <p>(h) Notwithstanding subsections (b)(2), and (c) through (g), a local educational agency may use funds received under this section to carry out activities under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.) in accordance with the requirements of such part.</p>	<p>38. The Senate amendment, but not the House bill, includes findings stating the impact of fully funding IDEA and amends the 1999 Omnibus Appropriations Act to allow LEAs to use class size reduction funds for IDEA part B.</p>
	<p>SEC. 7. FLEXIBILITY TO DEVELOP DROPOUT PREVENTION PROGRAMS.</p> <p>(a) FINDINGS- Congress finds that if part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.) were fully funded, local educational agencies and schools would have the flexibility in their budgets to develop dropout prevention programs, or any other programs deemed appropriate by the local educational agencies and schools, that best address their unique community needs and improve student performance.</p> <p>(b) AMENDMENT- Section 307 of the Department of Education Appropriations Act, 1999, is amended by adding after subsection (g) the following:</p> <p>(h) Notwithstanding subsections (b)(2), and (c) through (g), a local educational agency may use funds received under this section to carry out activities under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.) in accordance with the requirements of such part.</p>	<p>39. The Senate amendment, but not the House bill includes findings stating that fully funding IDEA would free up funds at the local level to develop dropout programs to best address their needs and amends the 1999 Omnibus Appropriations Act to allow LEAs to use class size reduction funds for IDEA part B.</p>

H.R. 800	Senate Amendment	Notes
	<p>SEC. 8. AUTHORIZATION OF APPROPRIATIONS.</p> <p>In addition to other funds authorized to be appropriated to carry out part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.), there are authorized to be appropriated \$150,000,000 to carry out such part.</p>	<p>40. The Senate amendment, but not the House bill authorizes \$150 million in additional funds for IDEA.</p>
	<p>SEC. 9. FLEXIBILITY TO DEVELOP AFTERSCHOOL PROGRAMS.</p> <p>(a) FINDINGS- Congress finds that if part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.) were fully funded, local educational agencies and schools would have the flexibility in their budgets to develop afterschool programs, or any other programs deemed appropriate by the local educational agencies and schools, that best address their unique community needs and improve student performance.</p> <p>(b) AMENDMENT- Section 307 of the Department of Education Appropriations Act, 1999, is amended by adding after subsection (g) the following:</p> <p>(h) Notwithstanding subsections (b)(2), and (c) through (g), a local educational agency may use funds received under this section to carry out activities under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.) in accordance with the requirements of such part.</p>	<p>41. The Senate amendment, but not the House bill includes findings stating that fully funding IDEA would free up funds at the local level to develop after-school programs to best address their needs and amends the 1999 Omnibus Appropriations Act to allow LEAs to use class size reduction funds for IDEA part B.</p>
	<p>SEC. 10. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.</p> <p>In addition to other funds authorized to be appropriated to carry out part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.), there are authorized to be appropriated \$600,000,000 to carry out such part.</p>	<p>42. The Senate amendment, but not the House bill, authorizes \$600 million in additional appropriations for IDEA part B.</p>

H.R. 800	Senate Amendment	Notes
	<p>SEC. 11. FLEXIBILITY TO DEVELOP PROGRAMS TO REDUCE SOCIAL PROMOTION AND ESTABLISH SCHOOL ACCOUNTABILITY PROCEDURES.</p> <p>(a) FINDINGS- Congress finds that if part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.) were fully funded, local educational agencies and schools would have the flexibility in their budgets to develop programs to reduce social promotion, establish school accountability procedures, or any other programs deemed appropriate by the local educational agencies and schools, that best address their unique community needs and improve student performance.</p> <p>(b) AMENDMENT- Section 307 of the Department of Education Appropriations Act, 1999, is amended by adding after subsection (g) the following:</p> <p>(h) Notwithstanding subsections (b)(2), and (c) through (g), a local educational agency may use funds received under this section to carry out activities under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.) in accordance with the requirements of such part.</p>	<p>43. The Senate amendment, but not the House bill includes findings stating that fully funding IDEA would free up funds at the local level to develop programs to reduce social promotion, establish school accountability programs or any other programs to best address their needs and amends the 1999 Omnibus Appropriations Act to allow LEAs to use class size reduction funds for IDEA part B.</p>
	<p>SEC. 12. ALTERNATIVE EDUCATIONAL SETTING.</p> <p>(a) IN GENERAL- Section 615(k)(1)(A)(ii)(I) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(k)(1)(A)(ii)(I)) is amended to read as follows:</p> <p>(I) the child carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or a local educational agency; or.</p> <p>(b) APPLICATION- The amendment made by subsection (a) shall apply to conduct occurring not earlier than the date of enactment of this Act.</p>	<p>44. The Senate amendment, but not the House bill, includes an amendment to IDEA that subjects a child with a disability to the discipline provisions if they possess a weapon at school, in addition to carrying a weapon to school (current law) and applies this new provision to conduct occurring not earlier than the date of enactment of this Act.</p>
	<p>SEC. 13. FURTHER AUTHORIZATION OF APPROPRIATIONS.</p> <p>In addition to other funds authorized to be appropriated to carry out part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.), there are authorized to be appropriated \$500,000,000 to carry out such part.</p>	<p>45. The Senate amendment, but not the House bill, authorizes \$500 million in additional appropriations for IDEA part B.</p>

Attachment A

Proposed Amendment

(S) OVERSIGHT AND REPORTING-

(ii) REPORTING- The State educational agency shall submit to the Secretary an annual report on the results of such oversight and its impact on the improvement of education programs.

(B) PERFORMANCE DATA-

(i) STATE REPORTING- Not later than 2 years after a State is designated as an Ed-Flex Partnership State, each such State shall include, as part of their report to the Secretary under clause (ii) of subparagraph (A), performance data demonstrating the degree to which progress has been made toward meeting the objectives outlined in section 3(A)(iii). The report to the Secretary shall, when applicable, include--

(I) information on the total number of waivers granted [for Federal and State statutory and regulatory requirements under this Act], including the number of waivers granted for each type of waiver;

(II) information describing the types and characteristics of waivers granted, [their effect on the implementation of State and local educational reforms], and their relationship to the progress of local educational agencies and schools toward meeting their performance objectives; and

(III) an assurance from State program managers that the data used to measure performance of the education flexibility program under this section are reliable, complete, and accurate, as defined by the State, or a description of a plan for improving the reliability, completeness, and accuracy of such data.

(ii) SECRETARY REPORT- The Secretary shall--

(I) make each State report available to Congress and the general public;

(II) submit to Congress a report, on a timely basis, that addresses the effect that the education flexibility program under this section has had on [the implementation of State and local educational reforms and on the performance of students affected by the waivers.]

The Secretary shall include in the report to Congress an assurance that the data used to measure performance of the education flexibility program under this section are complete, reliable, and accurate or a plan for improving the reliability, completeness, and accuracy of such data.

DRAFT
Statement by the President
April 20, 1999

I am pleased that a little more than a year after I proposed the idea of a national Ed-Flex bill to the National Governors' Association, Congress appears ready to send me legislation I can sign. This bill will offer states more flexibility in their use of federal funding in exchange for demonstrated increases in student achievement. I am particularly pleased that the conference report strengthens accountability measures and preserves our effort to reduce class size in the early grades. The bipartisan work on this legislation shows we can and must work together to improve our nation's schools. Now Congress can move on to the most important aspects of the nation's education agenda -- finishing the job of hiring 100,000 well-prepared teachers to reduce class size, passing my initiative to help build and modernize 6,000 public schools, and my plan to hold states and school districts accountable for results.

**Statement of the President
March 10, 1999**

Today, the Senate and the House have the chance to move forward with bipartisan legislation to reduce class size and improve public schools across the country. Last year, with bipartisan support, Congress enacted a down payment on my initiative to hire 100,000 teachers to reduce class size in the early grades. This week, the Republican leadership in the Senate not only is blocking a vote on the Murray-Kennedy amendment to finish the job, but is trying to undermine the bipartisan agreement we reached last fall. The Republicans are attempting to take the funds we agreed to invest in reducing class size and divert those funds to special education. While we should increase funding for special education -- as we have done in past years and as my budget recommends continuing to do in the future -- I will vigorously oppose taking this money from the recently enacted class size initiative. We should not be pitting our children against one another or changing the rules now on our critical efforts to reduce class size. Smaller classes will help all students do better, and will reduce the need for special education services by helping teachers identify and assist as early as possible children who are having learning problems. I call on every member of Congress to reject these Republican efforts, and allow an up-or down vote this afternoon on the Murray-Kennedy and Clay-Wu measures to help reduce class size and hire well-prepared teachers across the nation.

PITTSBURGH POST-GAZETTE

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all costs



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Teacher hiring imperils education bill

Wednesday, April 14, 1999

By Jack Torry, Post-Gazette Washington Bureau

WASHINGTON - Senate Democrats yesterday warned that they would kill an education bill backed by Pennsylvania Rep. William Goodling, R-York, the House Education Committee chairman, unless Republicans remove a controversial section that would make it more difficult for the federal government to finance the hiring of 100,000 new teachers.

In a letter to Goodling, 36 Senate Democrats said they will support an expected presidential veto unless a joint committee of House and Senate members deletes a conservative amendment that would permit states the option of using \$1.2 billion either to hire new teachers or to finance education programs for the disabled.

The amendment, sponsored by Senate Majority Leader Trent Lott, R-Miss., was added to the Senate version of the bill last month during floor debate. Democrats have sharply objected, arguing that it would force state officials to choose between hiring new teachers - a cornerstone of President Clinton's education program - and financing programs for the disabled.

"We strongly support both of these programs and are committed to funding them," Senate Democrats wrote Goodling.

Clinton has signaled a veto unless the Lott amendment is deleted. If 34 Senate Democrats support his veto, the bill would die. The Senate approved the education measure last month, 98-1, while the House passed it by a 330-90 margin.

Among the Democrats signing the letter were Senate Minority Leader Tom Daschle of South Dakota and Sens. Carl Levin of Michigan, Edward Kennedy of Massachusetts and Tom Harkin of Iowa.

Jim Manly, an aide to Kennedy, predicted that Republicans would eventually drop the Lott amendment, maintaining that the majority party is "desperate to get out of the shadow of the impeachment trial and show they can work on an agenda that's important to the American people. If they are truly anxious to get this legislation, they're going to have to strip out the Lott provision."

Jay Diskey, a spokesman for Goodling, indicated that House Republicans may agree to Senate Democratic demands, which essentially would leave the fight over hiring new teachers for another bill. But Diskey warned that Democrats are "going to have to make a choice on whether they want to argue or whether they want to have a bipartisan achievement."

The core of the bill would provide state and local officials with greater flexibility to spend \$10.8 billion annually in federal education program money.



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THE WHITE HOUSE
WASHINGTON

April 28, 1999

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

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

I. PURPOSE

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

II. BACKGROUND

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

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

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

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

III. PARTICIPANTS

Briefing Participants:

Larry Stein
Bruce Reed
Broderick Johnson
Paul Glasris

Event Participants:

Secretary Richard Riley
Senator Ron Wyden (D-OR)
Senator Bill Frist (R-TN)
Representative Tim Roemer (D-IN)
Representative Michael Castle (R-DE)
Dr. Iris Metts, Delaware Secretary of Education

IV. PRESS PLAN

Open press.

V. SEQUENCE OF EVENTS

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

VI. REMARKS

To be provided by Speechwriting.

VII. ATTACHMENTS

Members of Congress attending.

41. Ed-Flex Meeting

42. Repubs backtracking

- takes out targeting provision of both chambers
- accountability - backback on some stuff,
- Lott - should have credible veto threat

↳ Goolbsy's governor - saying 'get them' if guns up works.

Both targeting provs. - How far we were protective?? If think Ed has to figure out.

Ties to comp st plan

Inabil to waive ^{press of} state on themselves

Secy review of goals

Student achievement language

Termination of waivers w/out results.

Strong public notification + comment.

Parents stuff

↓
Talk to Sen Reed's staff

Drop in the immediately

ED → "Where we are on scholarships"

Education Q&A's
March 10, 1999

- Q: A NY Times editorial today argues that Ed-Flex could result in harm to high-poverty schools and cited a GAO report that found that most states in the pilot Ed-Flex program were not able to track results. Does the administration support the Ed-Flex bills that are before the Senate and House today?**
- A: The Administration has long supported the Ed-Flex concept, and we have stated repeatedly that we support passage of the bill as long as it contains strong accountability provisions to go along with expanded flexibility. We should give states the waiver authority they need to make their education programs work as well as possible, but we should track these waivers to make sure they produce results. We should know whether a waiver is improving student performance and make sure we change or drop waivers that are failing to do so. The Administration is open to a variety of specific proposals, but will insist that Ed-Flex contain a mechanism to link waivers to student performance.
- Q: The NY Times editorial today supported a Miller-Kildee proposal that would allow Ed-Flex waivers only if states had strong assessment systems in place and a plan to close the gap in achievement between high- and low-poverty schools. The editorial says that it would be best to set aside debate on ed-flex until ESEA is reauthorized but that moving forward without the Miller-Kildee amendment would be "socially irresponsible." Does the administration support the Miller-Kildee amendment?**
- A: We want to strengthen the accountability proposals in Ed-Flex to ensure that waivers are resulting in increased academic performance for all children - including those in the greatest need. We support the Miller-Kildee amendment to help address this challenge. We also are open to other ways to strengthen accountability in the bill. The important thing is to make sure that some mechanism exists to track waivers and ensure that we change or drop waivers that are failing to improve student performance.
- Q: Why is the Administration supporting the passage of an unrelated amendment to reduce class size on the Ed-Flex bill? Won't this derail the bill?**
- A: Ed-Flex is a good idea, but reducing class size in the early grades is far more important to improving the education of our children, and we must take action on this issue quickly. Unless we make a long-term commitment to reducing class size now, communities will be unable to make effective use of the monies we appropriated last year for this purpose. That is why we are very pleased that the Senate leadership has finally agreed to allow an up or down vote on an amendment to hire 100,000 teachers to reduce class size in the early grades. The President is urging every Senator to vote for the Murray-Kennedy amendment to bring every class in the early grades down to an average of 18 nationwide.

Q: Will the President veto an Ed-Flex bill that does not have a class-size provision?

A: We hope that by the time this bill comes to the President's desk, it will include a long-term authorization of our class size reduction initiative. As you know, there was bipartisan support last year for helping communities hire 100,000 well-prepared teachers in the early grades to reduce class size. We should build on that bipartisan effort to ensure a first-class education for our children, rather than allow partisan politics to defeat this important initiative. The Ed-Flex bill presents a perfect opportunity to continue our class size reduction efforts, and the President will consider whether Congress has taken advantage of this opportunity when he decides whether to sign the ed-flex bill.

Q: During debate Republicans have pointed out that school districts are incurring rising costs to educate special education students in order to comply with the recent Supreme Court decision on IDEA and existing federal requirements. Shouldn't the federal government fund existing mandates for special education before trying to fund a class size initiative?

A: This isn't an either-or issue, and the Republicans should not try to use IDEA as an excuse to avoid acting to reduce class-size. Last year, on a bipartisan basis, Congress provided funds to local communities to reduce class size. Now, as planning for the next school year is under way, those communities are looking to Congress for a commitment to continue funding for more teachers and smaller classes. Further, it is important to remember that states are getting increased money for special education: grants for this purpose have increased almost 85 percent since 1996. Equally important, our class size and other education proposals will help decrease the need for special education services by enabling schools to identify students who are having difficulties and provide intensive services to them.

Q: What do you think of an amendment offered by Senator Jeffords to permit local school districts to spend their class size funding on special education?

A: We will vigorously oppose this amendment. Last year, Congress agreed with bipartisan support to make an important down payment to help local school districts reduce class size in the early grades -- when children learn to read and master the basics. Of course, we support increased investments to help children with disabilities -- and investment in this program has increased dramatically in recent years. But we shouldn't address this need by abandoning our critical class size initiative. Republicans should not try to use IDEA as an excuse to avoid acting on our class-size initiative -- especially given that this initiative will help decrease the need for special education services by enabling schools to identify students who are having difficulties and provide intensive services to them.

Q: Does the administration support amendments offered by Democrats on other education issues such as ending social promotions, drop-out prevention and after-school funding?

A: We support the goals that these various measures are trying to achieve. Our top priority is for Congress to pass an Ed-flex bill that strengthens accountability for the waivers granted under the Ed-Flex program, and that provides local communities with a commitment to continue funding to reduce class size. We look forward to a bill that accomplishes those key objectives.



Educ-EDFlex

THE SECRETARY OF EDUCATION
WASHINGTON, D.C. 20202

April 13, 1999

Dear Conferee:

I am writing to express my views on the House- and Senate-passed versions of H.R. 800, the Education Flexibility Partnership Act of 1999. As you know, "ED-Flex" authority permits States to waive certain statutory and regulatory requirements that apply to Federal education programs in a manner that complements State educational reform efforts and promotes achievement to high standards by all students. The Administration has long supported the concept of expanding ED-Flex authority beyond the 12 States allowed under current law, so long as that expansion does not undermine the purposes of those Federal programs and maintains a high degree of accountability for results. I am very pleased, therefore, that both bills would expand eligibility for ED-Flex status to all the States, as well as the District of Columbia and the Commonwealth of Puerto Rico, and couple that increased flexibility with a serious attention to maintaining accountability at the State and local level. The Senate bill, however, contains provisions that retreat from last year's bipartisan commitment regarding the class size reduction authority and are unrelated to the expansion of the ED-Flex authority. If adopted by the Conferees, I would be forced to recommend to the President that he veto the conference report. I urge the Conferees to avoid such a disappointing and unnecessary result.

Turning to the ED-Flex provisions, I am very pleased that both bills have strong provisions for ensuring State monitoring of local ED-Flex activities and termination of waivers that have inadequate or harmful results. With regard to the following provisions, I offer the following views:

- **Public notice and comment.** I am pleased that both the Senate and House versions contain provisions to enhance parental involvement in the ED-Flex waiver process. In order to maximize parental involvement and improve ED-Flex waivers, I support the Senate's provision on this issue, with the addition of language included in the House bill requiring the public notice to contain a description of any expected improvements in student performance and the public comments received by the State and local education agencies to be made available for public review.
- **Expansion of ED-Flex Authority.** With regard to the expansion of the ED-Flex authority, I support the Senate version of the bill, which would make very clear that a State may not waive Federal requirements applicable to itself.

Page 2

- **Accountability Provisions.** With respect to State eligibility for ED-Flex status, I support the more rigorous conditions in the House bill, as they apply to implementation of standards and assessments under Title I of the Elementary and Secondary Education Act of 1965 (ESEA). With respect to the State's application for ED-Flex status, I support the language in the Senate bill, which focuses on how ED-Flex authority will assist in implementing the State's comprehensive reform plan. Regarding the renewal of Ed-Flex authority, I support the more rigorous requirements in the House version that require the State to show measurable progress toward achieving the State's educational objectives.
- **Targeting Provisions.** With respect to waivers that would not be authorized, I strongly support both the House and Senate versions regarding school eligibility for Title I Part A since both these provisions target funds more directly to high-poverty schools.
- **State Reporting.** I believe that complete State reporting of ED-Flex results is important and so support the provisions of the House bill relating to annual State reporting to the Secretary about the numbers and characteristics of waivers granted.
- **Sunset Provision.** Finally, I strongly support the provision of the House bill that would "sunset" this Act upon enactment of the upcoming reauthorization of the ESEA, because it is vitally important that continuation of ED-Flex authority be made consistent with changes to the underlying Federal programs to which it applies.

Class Size

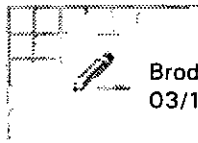
Last fall, Congress enacted and funded, on a bipartisan basis, a down payment on the President's plan to help the Nation's school districts reduce class sizes in the early elementary grades. Regrettably, the Senate bill contains amendments to the class size reduction authority that would undermine its impact by permitting local school districts to use funds received under that initiative not to reduce class size, but to meet obligations they are already required to meet under Part B of the Individuals with Disabilities Education Act. The value of reducing class size in the early elementary grades is supported by research, and doing so is one of the most important things we can do to honor our national commitment to ensuring equal educational opportunity for all our children. Moreover, reducing class size in the early grades allows teachers to identify, and work more effectively with, students who have learning disabilities, thereby potentially reducing those students' need for intensive special education services in the later grades. Rather than undermining the bipartisan effort to reduce class size -- and setting parent against parent in school districts across the country -- I would have supported a bill that extended the President's initiative, so that school districts could plan to hire additional qualified teachers, provide additional classrooms, and take the other steps necessary to reduce class size. I certainly cannot support a bill that contains these Senate amendments and would recommend that the President veto it if it were presented to him.

Page 3

The Office of Management and Budget advises that there is no objection to the submission of this report and that from the standpoint of the Administration's program, enactment of H.R. 800 containing the Senate's amendments relating to the class size reduction initiative would not be in accord with the President's program.

Yours sincerely,


Richard W. Riley



Broderick Johnson
03/15/99 11:11:22 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Barbara Chow/OMB/EOP, Scott_Fleming @ Ed.gov,
cc: See the distribution list at the bottom of this message
Subject: Conferees

It looks like the House and Senate will appoint conferees this week on Ed-Flex. Numbers of conferees are not yet set. It is highly unlikely that the conference will get underway before the two week Easter break that begins next Friday.

When the House takes up appointment of its own conferees, it will be in order for the Democrats to offer a motion to instruct House conferees. That could happen as early as this Wed. Such a motion could serve as a test vote on class size. I think we probably all agree that the best "message" for that instruction would be that the conferees get rid of the Lott amendment on this year's class size funding, rather than insisting on class size expansion. Gephardt and Clay will be looking for our advice as to that message.

If the conference is still open 20 calendar days after appointment of conferees, additional motions to instruct would be in order as privileged motions (with a one day notice before any such motion must be considered by the House).

Message Copied To:

Tanya E. Martin/OPD/EOP
Jonathan H. Schnur/OPD/EOP
Sandra Yamin/OMB/EOP
Cathy R. Mays/OPD/EOP
Laura Emmett/WHO/EOP

Educ - Effort
and
Educ - class size

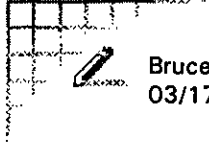
STATEMENT BY VICE PRESIDENT GORE
March 8, 1999

Before we get started, I wanted to make a brief statement about a debate to take place on the Senate floor later today.

Senators Murray and Kennedy will offer a measure to fully fund our initiative to help communities hire 100,000 well-trained teachers over the next six years. Last year, President Clinton and I called for this initiative to help communities hire 100,000 teachers over seven years to reduce class size in the early grades to a national average of 18. We worked across party lines to enact an important down payment on this initiative -- \$1.2 billion to hire 30,000 teachers this year.

Now, Congress has the opportunity to build on this bipartisan progress. Unfortunately, some in Congress are trying to shut down debate before this measure can even be voted on.

I call on the Senate to allow an up or down vote on the Murray-Kennedy class size amendment, and I urge every senator to vote for it. Let's work together across party lines to make real progress on behalf of educating our nation's children and improving our public schools.



Bruce N. Reed
03/17/99 10:21:51 AM

Record Type: Record

To: Sandra Yamin/OMB/EOP, Barbara Chow/OMB/EOP, Elena Kagan/OPD/EOP, Broderick Johnson/WHO/EOP

cc:

Subject: 3/17 draft of ed-flex letter

Here's a slightly revised version of your draft. We need to put it into rapid clearance today. Podesta hasn't given final sign-off yet, but wants us to have it ready to go.

DRAFT PRESIDENTIAL LETTER TO THE ED-FLEX CONFEREES

Dear

I am deeply concerned by the action taken by the Senate in its version of the Ed-Flex bill, S.280, to undermine the bipartisan commitment the Congress and I made last fall to help the nation's schools begin hiring 100,000 teachers to reduce class size in the early grades.

As parents and teachers across America understand, smaller classes can make a profound difference for our children. Studies show that teachers in smaller classes give more personal attention to students and spend less time on discipline; as a result, students in these classes learn more and get a stronger foundation in the basics. Across the country, students in smaller classes outperform their peers in larger classes. And reduced class size makes the greatest difference for minority and disadvantaged students.

The Senate's action would allow local school districts to opt out of class size reduction altogether by shifting the \$1.2 billion appropriated for new teacher hiring into special education. It is divisive and wrong to pit one group of students against another in this way. Both class size education and special education programs make unique contributions to helping students achieve high standards and deserve our strong support.

The extension of the Ed-Flex authority permits States to waive certain Federal laws when doing so can help them raise educational achievement -- a concept that has strong bipartisan support. The Conference should not imperil that support with an amendment that undermines our previous commitment on reducing class size.

If the Congress sends me a bill that includes the Senate provision to undermine Class Size funding, I will veto it.

**Statement of the President
March 10, 1999**

I am pleased that the Senate Leadership has finally agreed to allow an up-or-down vote on an amendment to hire 100,000 teachers to reduce class size in the early grades. Last year, with bipartisan support, Congress enacted a down payment on this class size initiative, and school districts across the country will soon receive funds to begin hiring teachers. It is now time for Congress to finish the job by making a long-term commitment to class size reduction. I call on every Senator to vote for the Murray-Kennedy amendment to bring every class in the early grades down to a national average of 18.

I will vigorously oppose any Republican amendments to undermine the bipartisan agreement we reached last year on class size by diverting those funds to other uses, including special education. While we should increase funding for special education -- as we have done in past years and as my budget recommends continuing to do in the future -- we should not take this money from the recently enacted class size initiative. We should not pit our children against one another or change the rules now on our critical efforts to reduce class size. Smaller classes will help all students do better, and will reduce the need for special education services by helping teachers identify and assist as early as possible children who have learning problems. I call on every member of Congress to reject these efforts to tear down what we accomplished last year, and call on them instead to build on that significant bipartisan achievement.

**Presidential Statement on Ed-Flex
March 11, 1999**

I have long supported the Ed-Flex concept, and I was pleased when the Congressional leadership decided to take up this bill as one of its first matters of business. Today, however, the Senate used this bill to undermine one of our most important educational achievements -- an initiative to hire 100,000 well-prepared teachers to reduce class size in the early grades to a national average of 18. The Senate not only voted down an amendment to ensure long-term funding for this initiative, but passed an amendment that would allow local school districts to completely opt out of class size reduction. I will work hard for the elimination of this amendment in Conference. We should be working together to make continued progress on obvious national needs such as reducing class size -- not attempting to tear down the bipartisan work we did last year to address this problem.

TOM DASCHLE

U.S. Senator for South Dakota

320 North Main, Suite B
Sioux Falls, SD 57104
605-334-9596

320 S. First Street, Suite 101
Aberdeen, SD 57401
605-225-8823

816 6th Street
Rapid City, SD 57701
605-348-7551

Washington, DC 20510
202-224-2321
1-800-424-9094

FAX COVER SHEET

Date: March 16, 1999
TO: Broderick Johnson
Fax Number: 456-2604
FROM: Joan Huffer
Senator Tom Daschle
S-221 United States Capitol
Washington, DC 20510
Telephone: (202) 224-5556

Number of Pages (Including Cover Sheet): 1

MESSAGE: current version of Ed-Flex letter

United States Senate

WASHINGTON, DC 20510

March 16, 1999

The Honorable Jim Jeffords
Chairman
Committee on Health, Education, Labor, and Pensions
United States Senate
Washington D.C. 20510

Dear Mr. Chairman:

We are pleased that we are moving toward an expansion of Ed-Flex that increases flexibility and accountability, but we are deeply concerned about amendments added to the Ed-Flex bill that passed the Senate on March 11, 1999. We support expanding Ed-Flex, but the bill as it currently stands places two very important programs in conflict -- the President's initiative on class size, and support for the Individuals with Disabilities in Education Act. We strongly support both of these programs and are committed to funding them.

It should be possible in conference to develop a bill that expands the Ed-Flex program, and does not place the class size program and IDEA in competition with each other for the same funds. If such an agreement is not possible, we intend to oppose the conference report.

We look forward to working with you on this and other important education initiatives.

Sincerely,

_____	_____
_____	_____
_____	_____



Dag Vega

03/11/99 07:02:21 PM



Record Type: Record

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

cc:

Subject: Statement by the President: Ed-Flex

THE WHITE HOUSE

Office of the Press Secretary
(Antigua, Guatemala)

For Immediate Release
1999

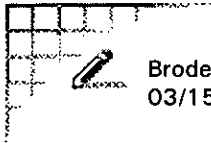
March 11,

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30-30-30

Message Sent To:



Broderick Johnson
03/15/99 11:11:22 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Barbara Chow/OMB/EOP, Scott_Fleming @ Ed.gov,
cc: See the distribution list at the bottom of this message
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Jonathan H. Schnur/OPD/EOP
Sandra Yamin/OMB/EOP
Cathy R. Mays/OPD/EOP
Laura Emmett/WHO/EOP

**Statement of the President
March 10, 1999**

I am pleased that the Senate Leadership has finally agreed to allow an up-or-down vote on an amendment to hire 100,000 teachers to reduce class size in the early grades. Last year, with bipartisan support, Congress enacted a down payment on this class size initiative, and school districts across the country will soon receive funds to begin hiring teachers. It is now time for Congress to finish the job by making a long-term commitment to class size reduction. I call on every Senator to vote for the Murray-Kennedy amendment to bring every class in the early grades down to a national average of 18.

I will vigorously oppose any Republican amendments to undermine the bipartisan agreement we reached last year on class size by diverting those funds to other uses, including special education. While we should increase funding for special education -- as we have done in past years and as my budget recommends continuing to do in the future -- we should not take this money from the recently enacted class size initiative. We should not pit our children against one another or change the rules now on our critical efforts to reduce class size. Smaller classes will help all students do better, and will reduce the need for special education services by helping teachers identify and assist as early as possible children who have learning problems. I call on every member of Congress to reject these efforts to tear down what we accomplished last year, and call on them instead to build on that significant bipartisan achievement.

1) Parity U_f

2) Get em back - no rewarding illegal immig

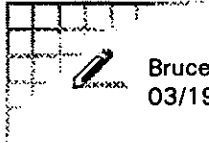
3) Pass the sup? Unless we do, we
encourage illegal immig

Motion to Instruct Conferees

Mr. Clay moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendments to the bill H.R. 800, an Act to provide for education flexibility partnerships, be instructed to insist that—

(1) funds appropriated under section 307 of the Department of Education Appropriations Act of 1999, may not be used for any activity other than those described in section 307 (class size reduction and professional development), as such section was in effect on October 21, 1998, in that the Senate Amendments to section 307 of such Act are inconsistent with the purpose and goal of such section, which is to improve educational achievement through a long-term commitment to help local communities hire new teachers to reduce class sizes in the early grades; and

(2) additional funding should be appropriated for the Individuals with Disabilities Education Act, but not by reducing funds for class size reduction.



Bruce N. Reed
03/19/99 06:24:12 PM

Record Type: Record

To: John Podesta/WHO/EOP
cc: Karen Tramontano/WHO/EOP
Subject: Tim Roemer

At your suggestion, I talked to Roemer earlier this week about Ed-flex and whether we should issue a veto threat on the Senate class size provision. He remains adamant that we can get this provision out without a public veto threat, and that we'll only alienate Republicans like Castle and Frist if we make such a threat. I told him we didn't want Republicans to have any doubts about our intentions. I don't think his strategy will be sufficient -- but if we decide to make a public threat, we'll need to wrestle with him some more.

We can make a call on this sometime next week. The House will vote on a motion to instruct conferees on Wednesday or so, which should give us a little more comfort that we can sustain a veto. Meanwhile the Senate Dems have collected something like 27 signatures on a letter. It will probably take more pressure from Daschle and a more public statement from the Administration to get to 34. In the meantime, Goodling, Frist, and Castle have assured Riley and Roemer that the leadership has promised to drop this provision -- and some Republican govs like Ridge have called for a clean bill. Of course, such assurances aren't worth much these days.

Roemer also said he'd been trying to reach you with some suggestions about China policy, including that we help MFN supporters like him get a meeting with Zhu next month so they can lecture him on human rights.

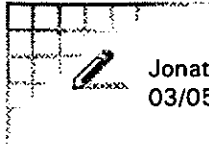
**Daily Report on Ed-Flex
March 8, 1999**

Senator Lott's motion to invoke cloture on the Ed-Flex bill failed today, on a straight party-line vote. Another cloture vote on the bill is scheduled for tomorrow; we expect much the same vote. Immediately following the cloture vote, we issued a statement from you calling once again on the Republican Leadership to allow an up-or-down vote on the class size amendment. The Vice President delivered the same message at the top of his livability event and in radio interviews. Odds now are that Senator Lott will take down the bill after the failure of the second cloture vote; there is still a chance, however, that he will enter into a time agreement allowing a vote on class size and one or two other Democratic amendments. If Lott does allow a vote on class size, we expect Republicans to argue that Congress should fund no new initiatives until it fully funds special education.

E Inc - 8/2/99

Statement of the President
March 8, 1999

The Republican Leadership continues to block a vote on an amendment to finish the job of hiring 100,000 teachers to reduce class size. Communities across the country need to know that Congress will live up to the bipartisan commitment we made last fall to fund this effort. The American people expect us to work together to improve the education of our students. I call on the Republican Leadership to allow an up-or-down vote on more teachers and smaller classes.



Jonathan H. Schnur
03/05/99 07:35:04 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Tanya E. Martin/OPD/EOP
Subject: VP on class size Monday

With the cloture vote Monday at 5pm, we are trying to see if we can get time on the VP's schedule to come out and make a statement on the importance of the vote sometime on Monday. While Pat Ewing and I are checking on these issues within OVP, I wanted to make sure you 1) still agree that this makes sense, and 2) see if you had a view on which option makes the most sense:

- a) The VP could make a statement somewhere in the White House-- Pat Ewing was musing about the idea of him going to the briefing room.
- b) The VP could go to the hill. Kennedy, Murray, and Daschle are meeting with the education groups at 1:30pm, and Murray's office raised the idea with Broderick of the VP going to this meeting. The debate on the class size amendment would then begin at 3pm. Before proceeding down this path, Broderick would want to check with Daschle's people, and I'd want to check with Ron on feasibility and desirability for the VP.

Ed-Ed Flex
and
Ed-Ed class size

**Statement of President Clinton on Ed-Flex
March 5, 1999**

I strongly support the efforts of Senators Murray and Kennedy to offer a class size amendment to the Ed-Flex bill. We must make a long-term commitment now to hire 100,000 new, well-prepared teachers to reduce class size in the early grades. The Republican Leadership is wrong to try to shut down debate on this bill before a class size amendment can be voted on. I urge them to allow an up-or-down vote on this amendment, and I urge every Senator to vote for it.

**Statement of the President
March 8, 1999**

For the second day in a row, the Republican Leadership has continued its efforts to stand in the way of voting on an amendment to finish the job of hiring 100,000 teachers to reduce class size. Communities across the country need to know that Congress will live up to the bipartisan commitment we made last fall to fund this effort. The American people expect us to work together to improve the education of our students. I call on the Republican Leadership to allow an up-or-down vote on more teachers and smaller classes, and I call on every Senator to support the Murray-Kennedy measure to reduce class size and hire well-prepared teachers across the nation.



Kate P. Donovan
03/10/99 09:11:11 AM

.....

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Constance J. Bowers/OMB/EOP, Janet R. Forsgren/OMB/EOP
Subject: REVISED HSE FLOOR SAP: ED-FLEX

ACCORDING TO BRODERICK JOHNSON, THE SENTENCE THAT HAS BEEN ADDED TO THE HOUSE FLOOR SAP FOR ED-FLEX (AT END OF SAP) HAS BEEN APPROVED BY BRUCE REED, MIKE COHEN, AND SCOTT FLEMING. PLEASE LET ME KNOW IMMEDIATELY IF YOU HAVE ANY CONCERNS - I NEED TO SEND THE SAP WITHIN THE HOUR - FLOOR ACTION AT 10AM. THANK YOU.

H.R. 800 - Education Flexibility Partnership Act of 1999
(Rep.Castle (R) DE and 65 cosponsors)

The Administration supports House passage of H.R. 800, which would expand the "Ed-Flex" demonstration authority to permit all States that meet the eligibility criteria to waive certain statutory and regulatory requirements of Federal education programs. The Administration has long supported the concept of expanding ed-flex demonstration authority in a manner that will promote high standards and accountability for results, coupled with increased flexibility for States and local school districts to achieve those results.

The Administration is pleased with the amendments made by the House Committee on Education and the Workforce to "sunset" the bill upon reauthorization of the Elementary and Secondary Education Act of 1965 (to ensure consistency between that statute and Ed-Flex), terminate local waivers if achievement levels decline, and require public notice and comment before waivers are requested and granted.

The Administration strongly supports an amendment that is expected to be offered to H.R. 800 that would implement the President's proposal for a long-term extension of the one-year authority to help school districts reduce class size in the early grades, which the Congress approved last year on a bipartisan basis. In order to hire qualified teachers, arrange for additional classrooms, and take other steps that are necessary to reduce class size, school districts need to know, as soon as possible, that the Congress intends to support this initiative for more than one year.

The Administration also supports amendments designed to further strengthen accountability for results in the Ed-Flex program, and to ensure that Federal education dollars continue to reach the students they were designed to serve.



Kate P. Donovan
03/03/99 03:37:58 PM



Record Type: Record

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

cc:

Subject: One change to Ed Flex SAP

Broderick Johnson/Scott Fleming asked that we make the following change to the SAP for S. 280, ed-flex bill. Barbara Chow is okay with this change. If all of you approve, I can release the SAP immediately. The bill is on the Senate floor now. Thank you.

S. 280 - Education Flexibility Partnership Act of 1999
(Sen. Frist (R) TN and 41 cosponsors)

The Administration has long supported the concept of expanding ed-flex demonstration authority to permit all States to waive certain statutory and regulatory requirements of Federal education programs in a manner that will promote high standards and accountability for results, coupled with increased flexibility for States and local school districts to achieve those results. The Administration ~~will support S. 280 as long as the bill's accountability provisions are strengthened to ensure that State waivers of Federal requirements enhance children's educational achievement~~ **supports amendments designed to: 1) ensure that State waivers of Federal requirements result in improved student achievement; and 2) enhance parental involvement.**

In order to ensure consistency between ed-flex authority and the Elementary and Secondary Education Act of 1965 (ESEA), which will be undergoing reauthorization this year, the Administration urges Congress to sunset this legislation upon enactment of the ESEA.

The Administration strongly supports an amendment that is expected to be offered to S. 280 that would implement the President's proposal for a long-term extension of the one-year authority to help school districts reduce class size in the early grades, which the Congress approved last year on a bipartisan basis. In order to hire qualified teachers, arrange for additional classrooms, and take other steps that are necessary to reduce class size, school districts need to know, as soon as possible, that the Congress intends to support this initiative for more than one year.

* * * * *



Kate P. Donovan
03/08/99 04:18:12 PM

.....

Record Type: Record

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

cc:

Subject: Draft SAP: House Ed Flex bill

The House Rules is expected to meet on H.R. 800, To Provide for Education Flexibility Partnerships, on Tuesday (3/9) at 1:00pm with floor action on Wednesday (3/10). We aim to release the SAP by tomorrow morning for Rules action. Please review the SAP and provide comments/clearance by 9:00am tomorrow. Thank you.

H.R. 800 - Education Flexibility Partnership Act of 1999
(Rep.Castle (R) DE and 59 cosponsors)

The Administration supports House passage of H.R. 800, which would expand the "Ed-Flex" demonstration authority to permit all States that meet the eligibility criteria to waive certain statutory and regulatory requirements of Federal education programs. The Administration has long supported the concept of expanding ed-flex demonstration authority in a manner that will promote high standards and accountability for results, coupled with increased flexibility for States and local school districts to achieve those results.

The Administration is pleased with the amendments made by the House Committee on Education and the Workforce to "sunset" the bill upon reauthorization of the Elementary and Secondary Education Act of 1965 (to ensure consistency between that statute and Ed-Flex), terminate local waivers if achievement levels decline, and require public notice and comment before waivers are requested and granted.

The Administration strongly supports an amendment that is expected to be offered to H.R. 800 that would implement the President's proposal for a long-term extension of the one-year authority to help school districts reduce class size in the early grades, which the Congress approved last year on a bipartisan basis. In order to hire qualified teachers, arrange for additional classrooms, and take other steps that are necessary to reduce class size, school districts need to know, as soon as possible, that the Congress intends to support this initiative for more than one year.

The Administration also supports amendments designed to: (1) strengthen accountability provisions to ensure that the Ed-Flex program results in improved student achievement; and (2) ensure that Federal education dollars continue to reach the schools and students they were designed to serve.

* * * * *

(Do Not Distribute Outside Executive Office of the President)

This draft Statement of Administration Policy was developed by LRD (Connie Bowers) in consultation with the Department of Education (Riddle), and EIML (White/Mustain). It was also reviewed by DPC (Kagan/Schnur), OIRA (Chenok/Werfel), and BRCD (McAllister/Denduret).

OMB/LA Clearance:

BACKGROUND

The Education Flexibility Partnership Demonstration ("Ed-Flex") Act was enacted in 1994 as part of the Goals 2000: Educate America Act to test the idea of giving States authority to waive Federal statutory and regulatory requirements that impede the development and implementation of education reforms in the State. Originally limited to six States, this demonstration authority was extended to 12 States by the Omnibus Budget Reconciliation Act of 1996.

On March 3, 1999, Secretary Riley sent a letter to the House Committee on Education and the Workforce supporting the concept of expanding education flexibility, but supporting improvements that would provide greater accountability for results. The letter also strongly supported an amendment to extend, for six years, the current one-year authority to help school districts reduce class size in the early grades by hiring more teachers. The House Committee on Education and the Workforce ordered reported H.R. 800 on March 3, 1999. A similar bill, S. 280, is pending before the Senate.

SUMMARY OF H.R. 800

H.R. 800 would authorize the Secretary of Education to carry out an education flexibility program. Under the program, all States (as opposed to the 12 allowed in the current demonstration authority) could apply to waive for at least five years Federal statutory or regulatory requirements applicable to specified education improvement programs, if they demonstrate those requirements could hamper efforts to improve student achievement. To provide accountability, the bill would require States to adopt academic standards and provisions for holding schools accountable for student achievement. The bill would also: (1) require that States have authority to waive their own comparable requirements in addition to the Federal requirements; (2) remove Ed-Flex from the Goals 2000 statute; and (3) require a Title I plan (including approved content standards, performance measures, and assessments) to be in place for States to be eligible for waivers.

OTHER CONSIDERATIONS

Congress is scheduled to work this year on the Elementary and Secondary Education Act (ESEA) reauthorization. The Administration is developing an ESEA reauthorization proposal

that will contain accountability provisions to strengthen the ESEA and student achievement. By authorizing every State to waive rules, H.R. 800 as drafted could undermine an ESEA proposal that stresses accountability.

PAY-AS-YOU-GO SCORING

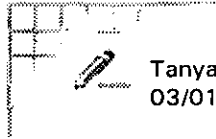
According to EIML (Mustain), H.R. 800 would not affect direct spending or receipts; therefore, it is not subject to the PAYGO provisions of the Omnibus Budget Reconciliation Act.

LEGISLATIVE REFERENCE DIVISION DRAFT
March 9, 1999 - 2:15 p.m.

Message Sent To:

Tanya E. Martin/OPD/EOP
Jonathan H. Schnur/OPD/EOP
Laura Emmett/WHO/EOP
Broderick Johnson/WHO/EOP
Barbara Chow/OMB/EOP
Sandra Yamin/OMB/EOP
Elena Kagan/OPD/EOP
Charles Konigsberg/OMB/EOP

Educ - EdFlex
and
~~EdFlex - Education~~



Tanya E. Martin
03/01/99 05:12:34 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: Draft SAP on S.280 - Ed Flex bill

OMB has called asking where we stand on the two open issues in the Ed-Flex SAP:

1) which option we prefer for the language discussing strengthened accountability. It seems in the absence of any specific information on a manager's amendment, we should use Option 1.

2) the sunset provision.

OMB is awaiting guidance from us on conversations that they thought Bruce may have been having with Mike regarding the language in the SAP on sunseting ed-flex when ESEA is reauthorized. I have a call into Mike to see where the Dept is on this language. Are you ok with it?

----- Forwarded by Tanya E. Martin/OPD/EOP on 03/01/99 04:59 PM -----



Kate P. Donovan
02/24/99 03:24:29 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Draft SAP on S.280 - Ed Flex bill

The draft SAP for S. 280, the Education Flexibility Partnership Act of 1999, is influx right now. The version below has two options. In general, option 1 is more vague and is recommended to be included if we don't find out any details about the possible manager's substitute amendment & the bill hits the floor. **Caroline/Broderick-can you keep us posted on whether a manager's substitute amendment is going to be offered and whether we support.** The Dept. of Education prefers Option 2.

The timing of the bill is also questionable, but the Senate Democratic cloakroom expects S.280 to come up next week on Monday or Tuesday (the Senate should stay w/ S.4 today & tomorrow along with a human rights resolution with only morning business on Friday). We should have time to work on this SAP; however, in the event that the bill pops sooner on the Senate floor, I need to have your comments for a quick turnaround. This SAP will also need to be cleared with all of the relevant principals.

Please note, there is also an issue on the "sunset" issue that is noted in the 1st paragraph (in bold)

below the stars. I will need closure on that as well. I look forward to your guidance on how to proceed. Thank you.

S. 280 - Education Flexibility Partnership Act of 1999
(Sen. Frist (R) TN and 35 others)

The Administration has long supported the concept of expanding ed-flex demonstration authority to permit all States to waive certain statutory and regulatory requirements of Federal education programs in a manner that will promote high standards and accountability for results, coupled with increased flexibility for States and local school districts to achieve those results.

✓ [**OPTION #1** The Administration will support S. 280 as long as the bill's accountability provisions are strengthened to ensure that State waivers of Federal requirements enhance children's educational achievement.]

[**OPTION #2** The Administration supports Senate passage of S. 280 only if the Senate adopts the pending manager's substitute that would strengthen the accountability provisions of the bill, to ensure that children's educational achievement is enhanced by State waivers of Federal requirements.]

✓ The Administration also urges adoption of an amendment that would terminate a State's authority to grant waivers on the effective date of the reauthorized Elementary and Secondary Education Act of 1965 (ESEA), so that the Congress can ensure consistency, during its upcoming consideration of the ESEA, between ed-flex authority and the accountability provisions of the ESEA.

The Administration strongly supports an amendment that is expected to be offered to S. 280 that would implement the President's proposal for a long-term extension of the one-year authority to help school districts reduce class size in the early grades, which the Congress approved last year on a bipartisan basis. In order to hire qualified teachers, arrange for additional classrooms, and take other steps that are necessary to reduce class size, school districts need to know, as soon as possible, that the Congress intends to support this initiative for more than one year.

* * * * *

(Do Not Distribute Outside Executive Office of the President)

This draft Statement of Administration Policy was developed by LRD (Connie Bowers) in consultation with the Department of Education (Riddle), EIML (Chow/White/Mustain), and DPC (Schnur). **The second paragraph ("The Administration also urges adoption . . .") was drafted by ED staff at the request of OMB/EIML (Barbara Chow), but ED (Michael Cohen) has not agreed to its inclusion and may be discussing it with Bruce Reed.**

OMB/LA Clearance:

BACKGROUND

The Education Flexibility Partnership Demonstration ("Ed-Flex") Act was enacted in 1994 as part of the Goals 2000 legislation in order to test the idea of giving States authority to waive Federal statutory and regulatory requirements that impede the development and implementation of education reforms in the State. Originally limited to six States, this demonstration authority was extended to 12 States by the Omnibus Budget Reconciliation Act of 1996.

During the 105th Congress, a similar bill (S. 2213) was considered, but never voted on, by the Senate. S. 2213 differed from S. 280 in that it would have amended the Goals 2000 Act to expand its education flexibility programs. S. 280 is a freestanding bill that authorizes a new Ed-Flex program. The Administration did not issue a SAP on 2213 because ED opined that most Democrats were not supportive of the legislation.

SUMMARY OF S. 280

S. 280 would authorize the Secretary of Education to carry out an education flexibility program. Under the program, all States (as opposed to the 12 allowed in the current demonstration authority) could apply to waive for at least five years Federal statutory or regulatory requirements applicable to specified education improvement programs, if they demonstrate those requirements could hamper efforts to improve student achievement. To provide accountability, the bill would require States to adopt academic standards and provisions for holding schools accountable for student achievement. The bill would also require that States have authority to waive their own comparable requirements as well.

OTHER CONSIDERATIONS

Congress is scheduled to work this year on the Elementary and Secondary Education Act (ESEA) reauthorization. The Administration is developing an ESEA reauthorization proposal that will contain accountability provisions to strengthen the ESEA and student achievement. By authorizing every State to waive rules, S. 280 as drafted could undermine an ESEA proposal that stresses accountability.

PAY-AS-YOU-GO SCORING

According to EIML (Mustain), S. 280 would not affect direct spending or receipts; therefore, it is not subject to the PAYGO provisions of the Omnibus Budget Reconciliation Act.

LEGISLATIVE REFERENCE DIVISION DRAFT
February 24, 1999 - 2:15 p.m.



Kate P. Donovan
03/02/99 04:38:24 PM



Record Type: Record

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

cc:

Subject: S. 280 - ED FLEX DRAFT SAP

Below is the revised SAP for S. 280, the Education Flexibility Partnership Act of 1999. The bill is expected on the Senate floor tomorrow morning (Wed. 3/3). Barbara Chow has approved this version. Please provide final comments/clearance by c.o.b. tonight so that we can send the SAP early tomorrow morning. Thank you.

S. 280 - Education Flexibility Partnership Act of 1999
(Sen. Frist (R) TN and 35 others)

The Administration has long supported the concept of expanding ed-flex demonstration authority to permit all States to waive certain statutory and regulatory requirements of Federal education programs in a manner that will promote high standards and accountability for results, coupled with increased flexibility for States and local school districts to achieve those results. The Administration will support S. 280 as long as the bill's accountability provisions are strengthened to ensure that State waivers of Federal requirements enhance children's educational achievement.

In order to ensure consistency between ed-flex authority and the Elementary and Secondary Education Act of 1965 (ESEA), which will be undergoing reauthorization this year, the Administration urges Congress to sunset this legislation upon enactment of the ESEA.

The Administration strongly supports an amendment that is expected to be offered to S. 280 that would implement the President's proposal for a long-term extension of the one-year authority to help school districts reduce class size in the early grades, which the Congress approved last year on a bipartisan basis. In order to hire qualified teachers, arrange for additional classrooms, and take other steps that are necessary to reduce class size, school districts need to know, as soon as possible, that the Congress intends to support this initiative for more than one year.

* * * * *

(Do Not Distribute Outside Executive Office of the President)

This draft Statement of Administration Policy was developed by LRD (Connie Bowers) in consultation with the Department of Education (Riddle), EIML (Chow/White/Mustain), and

DPC (Schnur).

OMB/LA Clearance:

BACKGROUND

The Education Flexibility Partnership Demonstration ("Ed-Flex") Act was enacted in 1994 as part of the Goals 2000 legislation in order to test the idea of giving States authority to waive Federal statutory and regulatory requirements that impede the development and implementation of education reforms in the State. Originally limited to six States, this demonstration authority was extended to 12 States by the Omnibus Budget Reconciliation Act of 1996.

During the 105th Congress, a similar bill (S. 2213) was considered, but never voted on, by the Senate. S. 2213 differed from S. 280 in that it would have amended the Goals 2000 Act to expand its education flexibility programs. S. 280 is a freestanding bill that authorizes a new Ed-Flex program. The Administration did not issue a SAP on 2213 because ED opined that most Democrats were not supportive of the legislation.

SUMMARY OF S. 280

S. 280 would authorize the Secretary of Education to carry out an education flexibility program. Under the program, all States (as opposed to the 12 allowed in the current demonstration authority) could apply to waive for at least five years Federal statutory or regulatory requirements applicable to specified education improvement programs, if they demonstrate those requirements could hamper efforts to improve student achievement. To provide accountability, the bill would require States to adopt academic standards and provisions for holding schools accountable for student achievement. The bill would also require that States have authority to waive their own comparable requirements as well.

OTHER CONSIDERATIONS

Congress is scheduled to work this year on the Elementary and Secondary Education Act (ESEA) reauthorization. The Administration is developing an ESEA reauthorization proposal that will contain accountability provisions to strengthen the ESEA and student achievement. By authorizing every State to waive rules, S. 280 as drafted could undermine an ESEA proposal that stresses accountability.

PAY-AS-YOU-GO SCORING

According to EIML (Mustain), S. 280 would not affect direct spending or receipts; therefore, it is not subject to the PAYGO provisions of the Omnibus Budget Reconciliation Act.

LEGISLATIVE REFERENCE DIVISION DRAFT

February 24, 1999 - 2:15 p.m.

Ed-Ed-Flex



16

03:22:13 PM

Record Type: Record

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

cc:

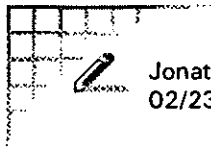
Subject: NGA Rountable - Ed-Flex

Jonathan Jones (Carper) told me last night that Gov O'Bannon at tomorrow's roundtable, intends to ask the President for a letter on Ed-Flex. I told him that was bush-league and urged him in strong terms not to have O'Bannon make that request to the President. I'm trying to reach O'Bannon's staff with the same message.

Mickey, on sequence, only Glendening (delete Schafer) will speak on Livability. Then Engler on Federalism. Let's hope we run out of time.

Message Sent To:

Mickey Ibarra/WHO/EOP
Fred DuVal/WHO/EOP
Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Tanya E. Martin/OPD/EOP



Jonathan H. Schnur
02/23/99 01:07:10 PM

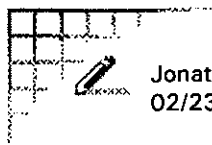
Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Tanya E. Martin/OPD/EOP
Subject: Re: revised class size paper

We are getting out the paper with one-year figures right now. Also, you are right -- these 7-year figures will definitely help make the case for this bill, notwithstanding OMB's concerns and later event needs.

Because these out-year figures were not in the FY 2000 budget, Barbara is somewhat uncomfortable putting out the seven-year figures. She is planning to call me back shortly. **But I have an idea for how to address her concern and strengthen the case for this bill.** We could include in the amendment's authorizing language specific authorizing levels for each of the next six years. If we do this, I think it would likely address Barbara's concerns (because it would provide a credible basis for the estimates we release). It would also help us make an even stronger argument for the bill -- i.e., last year, congress made a downpayment on the president's proposal by providing funding for 30,000 teachers, and this bill will help finish the job by authorizing funding over the next six years to help hire 100,000 teachers, including [7-YEAR STATE ALLOCATION] in [STATE.]

This will help us make the case that enacting this bill will help achieve totals included in our seven-year estimates. **If you think this is a good idea, Tanya and I can check with Barbara, Mike Cohen, Brod to make sure they have no objections.**



Jonathan H. Schnur
02/23/99 01:50:25 PM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Tanya E. Martin/OPD/EOP
Subject: SAP on Ed-flex

Tanya and I just looked at this, and Option 1 (if there's not yet a manager's amendment) seems a little soft. An alternative Option 1 would be:

"The Administration has long supported the concept of expanding ed-flex demonstration authority to permit all States to waive certain statutory and regulatory requirements of Federal education, and will support S. 280 as long as accountability provisions of the bill are strengthened to ensure that children's educational achievement is enhanced by State waivers of Federal requirements."

----- Forwarded by Jonathan H. Schnur/OPD/EOP on 02/23/99 01:47 PM -----

Constance J. Bowers

02/23/99 01:39:38 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: LRM CJB 8 = REVISED Statement of Administration Policy on S280 To Provide for Education Flexibility Partnerships

**Please provide comments on this *revised* draft SAP on S. 280 by:
4:00 p.m. today, Tuesday, February 23, 1999
(Senate consideration of S. 280 could begin tomorrow**

The text of the revised SAP follows. A text file is also included below. Please note that reviewers should select from the two options containing language on accountability.

DRAFT
February 23, 1999
12:45 PM

STATEMENT OF ADMINISTRATION POLICY

S. 280 - EDUCATION FLEXIBILITY PARTNERSHIP ACT OF 1999

(Sponsors: Frist (R), Tenn. and 33 others)

Constance J. Bowers

02/23/99 01:39:38 PM

Record Type: Record

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

cc:

Subject: LRM CJB 8 = REVISED Statement of Administration Policy on S280 To Provide for Education Flexibility Partnerships

**Please provide comments on this *revised* draft SAP on S. 280 by:
4:00 p.m. today, Tuesday, February 23, 1999
(Senate consideration of S. 280 could begin tomorrow**

The text of the revised SAP follows. A text file is also included below. Please note that reviewers should select from the two options containing language on accountability.

DRAFT

February 23, 1999
12:45 PM

STATEMENT OF ADMINISTRATION POLICY

S. 280 - EDUCATION FLEXIBILITY PARTNERSHIP ACT OF 1999

(Sponsors: Frist (R), Tenn. and 33 others)

The Administration supports Senate passage of S. 280, which would expand the "Ed-Flex" demonstration authority to permit all States to waive certain statutory and regulatory requirements of Federal education

[OPTION #1] programs, but urges that the accountability provisions of the bill be strengthened, to ensure that children's educational achievement is enhanced by State waivers of Federal requirements.

[OPTION #2] programs. The Administration is pleased that the pending manager's substitute will strengthen the accountability provisions of the bill, which will ensure that children's educational achievement is enhanced by State waivers of Federal requirements.

S. 280 is [generally] consistent with the President's call for expansion of Ed-Flex in a manner that will promote high standards and accountability for results, coupled with increased flexibility for States and local school districts to achieve those results.

The Administration supports a pending amendment to S. 280 that would implement the President's proposal for a long-term extension of the 1-year authority to help school districts reduce class size in the early grades, which the Congress approved last year on a bipartisan basis. In order to hire

qualified teachers, arrange for additional classrooms, and take other steps that are necessary to reduce class size, school districts need to know, as soon as possible, that the Congress intends to support this initiative for more than one year.

* * * * *



- S280-SAP.DOC

----- Forwarded by Constance J. Bowers/OMB/EOP on 02/23/99 12:00 PM -----

Total Pages: ____

LRM ID: CJB8

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

Tuesday, February 23, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Constance J. Bowers
PHONE: (202)395-3803 FAX: (202)395-6148

SUBJECT: **REVISED Statement of Administration Policy on S280 To Provide for Education Flexibility Partnerships**

DEADLINE: 4:00 p.m. today Tuesday, February 23, 1999
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS:
DISTRIBUTION LIST

AGENCIES:

EOP:
Barbara Chow
Sandra Yamin
Barry White
Leslie S. Mustain
Jonathan H. Schnur



Jeffrey A. Shesol
02/25/99 04:23:41 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Michael Waldman/WHO/EOP, Joshua S. Gottheimer/WHO/EOP
Subject: revised final -- actuality on ed-flex -- 2/25 4:15pm

Revised Final 02/25/99 4:15pm
Jeff Shesol

**PRESIDENT WILLIAM J. CLINTON
RADIO ACTUALITY ON ED-FLEX AMENDMENT
February 25, 1999**

This year we have an opportunity to work together, across party lines, to bring true progress to America's public schools. I welcome the idea of greater flexibility for states and school districts; and I urge the Senate to pass Ed-Flex legislation that provides for greater flexibility and accountability. But we must do more to give our children a world-class education. That is why I strongly support the amendment proposed by Senators Kennedy and Murray. We must further our national commitment to hiring more teachers and reducing the size of classrooms across America. Studies confirm what every parent already knows: smaller classes make a big difference, from improved test scores to improved discipline. The Senate should pass the Kennedy-Murray Amendment, and give our nation's children the individual attention they deserve in the classroom, and the better future that only a good education can bring.

Message Sent To: _____

Educ - Ed Flex
and
Educ - class size



Kate P. Donovan
02/24/99 03:24:29 PM



Record Type: Record

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

cc:

Subject: Draft SAP on S.280 - Ed Flex bill

The draft SAP for S. 280, the Education Flexibility Partnership Act of 1999, is influx right now. The version below has two options. In general, option 1 is more vague and is recommended to be included if we don't find out any details about the possible manager's substitute amendment & the bill hits the floor. **Caroline/Broderick-can you keep us posted on whether a manager's substitute amendment is going to be offered and whether we support.** The Dept. of Education prefers Option 2.

The timing of the bill is also questionable, but the Senate Democratic cloakroom expects S.280 to come up next week on Monday or Tuesday (the Senate should stay w/ S.4 today & tomorrow along with a human rights resolution with only morning business on Friday). We should have time to work on this SAP; however, in the event that the bill pops sooner on the Senate floor, I need to have your comments for a quick turnaround. This SAP will also need to be cleared with all of the relevant principals.

Please note, there is also an issue on the "sunset" issue that is noted in the 1st paragraph (in bold) below the stars. I will need closure on that as well. I look forward to your guidance on how to proceed. Thank you.

S. 280 - Education Flexibility Partnership Act of 1999
(Sen. Frist (R) TN and 35 others)

The Administration has long supported the concept of expanding ed-flex demonstration authority to permit all States to waive certain statutory and regulatory requirements of Federal education programs in a manner that will promote high standards and accountability for results, coupled with increased flexibility for States and local school districts to achieve those results.

[**OPTION #1** The Administration will support S. 280 as long as the bill's accountability provisions are strengthened to ensure that State waivers of Federal requirements enhance children's educational achievement.]

[**OPTION #2** The Administration supports Senate passage of S. 280 only if the Senate adopts the pending manager's substitute that would strengthen the accountability provisions of the bill, to ensure that children's educational achievement is enhanced by State waivers of Federal requirements.]

The Administration also urges adoption of an amendment that would terminate a State's

authority to grant waivers on the effective date of the reauthorized Elementary and Secondary Education Act of 1965 (ESEA), so that the Congress can ensure consistency, during its upcoming consideration of the ESEA, between ed-flex authority and the accountability provisions of the ESEA.

The Administration strongly supports an amendment that is expected to be offered to S. 280 that would implement the President's proposal for a long-term extension of the one-year authority to help school districts reduce class size in the early grades, which the Congress approved last year on a bipartisan basis. In order to hire qualified teachers, arrange for additional classrooms, and take other steps that are necessary to reduce class size, school districts need to know, as soon as possible, that the Congress intends to support this initiative for more than one year.

* * * * *

(Do Not Distribute Outside Executive Office of the President)

This draft Statement of Administration Policy was developed by LRD (Connie Bowers) in consultation with the Department of Education (Riddle), EIML (Chow/White/Mustain), and DPC (Schnur). **The second paragraph ("The Administration also urges adoption . . .") was drafted by ED staff at the request of OMB/EIML (Barbara Chow), but ED (Michael Cohen) has not agreed to its inclusion and may be discussing it with Bruce Reed.**

OMB/LA Clearance:

BACKGROUND

The Education Flexibility Partnership Demonstration ("Ed-Flex") Act was enacted in 1994 as part of the Goals 2000 legislation in order to test the idea of giving States authority to waive Federal statutory and regulatory requirements that impede the development and implementation of education reforms in the State. Originally limited to six States, this demonstration authority was extended to 12 States by the Omnibus Budget Reconciliation Act of 1996.

During the 105th Congress, a similar bill (S. 2213) was considered, but never voted on, by the Senate. S. 2213 differed from S. 280 in that it would have amended the Goals 2000 Act to expand its education flexibility programs. S. 280 is a freestanding bill that authorizes a new Ed-Flex program. The Administration did not issue a SAP on 2213 because ED opined that most Democrats were not supportive of the legislation.

SUMMARY OF S. 280

S. 280 would authorize the Secretary of Education to carry out an education flexibility program. Under the program, all States (as opposed to the 12 allowed in the current demonstration authority) could apply to waive for at least five years Federal statutory or regulatory requirements applicable to specified education improvement programs, if they

demonstrate those requirements could hamper efforts to improve student achievement. To provide accountability, the bill would require States to adopt academic standards and provisions for holding schools accountable for student achievement. The bill would also require that States have authority to waive their own comparable requirements as well.

OTHER CONSIDERATIONS

Congress is scheduled to work this year on the Elementary and Secondary Education Act (ESEA) reauthorization. The Administration is developing an ESEA reauthorization proposal that will contain accountability provisions to strengthen the ESEA and student achievement. By authorizing every State to waive rules, S. 280 as drafted could undermine an ESEA proposal that stresses accountability.

PAY-AS-YOU-GO SCORING

According to EIML (Mustain), S. 280 would not affect direct spending or receipts; therefore, it is not subject to the PAYGO provisions of the Omnibus Budget Reconciliation Act.

LEGISLATIVE REFERENCE DIVISION DRAFT

February 24, 1999 - 2:15 p.m.

Message Sent To:

Barbara Chow/OMB/EOP
Sandra Yamin/OMB/EOP
Elizabeth Gore/OMB/EOP
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Janelle E. Erickson/WHO/EOP



Leadership Conference on Civil Rights

1629 "K" St., NW, Suite 1010
Washington, D.C. 20006
Phone: 202 / 466-3311
Fax: 202 / 466-3435
TTY: 202 / 785-3859

Memorandum

To: Mike Epstein (Senator Wellstone)
Michael Myers (Senator Kennedy)
Danica Petroshius (Senator Kennedy)
Alexis King (Senator Daschle)
Jody Grant (Senator Daschle)

From: Wade Henderson
Cecilia Munoz
Bill Taylor
Nancy Zirkin

Date: February 23, 1999

Re: Ed Flex

Following up our recent conversation on Ed Flex, here is an amendment that the Leadership Conference proposes be offered to S280 when it reaches the floor.

Our first preference remains the postponement of the bill so that it can be considered along with the reauthorization of Title I later this year. If that can be accomplished by negotiations that would be fine.

But if it appears that S280 will be voted on soon, we believe that the amendments offered should be designed to make the bill more acceptable (or less unacceptable) by closing the loopholes that currently allow S280 to become a vehicle for states and LEAs to escape the responsibility of engaging in school reform.

The enclosed amendment (which has been separated into four parts for purposes of explanation, but which deals with one subject) is directed toward that aim. The amendment simply makes clear that the reform provisions of Title I cannot be waived and that a state must be in full compliance with Title I reforms before the Secretary will grant a waiver. The amendment is in every sense of the word an *accountability* amendment because it assures that states will have followed accountability requirements and will be accountable for results even if they receive waivers.

"Equality In a Free, Plural, Democratic Society"

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A. Philip Randolph
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Leon Lynch
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Brian Komar

(Continued)

Since S280 is replete with language that its purpose is to advance comprehensive school reform, it is hard to see on what basis advocates of S280 could oppose the amendments. Indeed, it may be that some sponsors such as Senator Wyden would accept the amendments.

Amendments that do not deal with the giant loopholes in S280 may be desirable on their own terms, but they will not solve the problem. Moreover, it will not help to have premature and losing votes on issues for which we will be trying to build support later on.

We feel strongly that S280 in its current form will damage the educational opportunities of the children LCCR represents, and urge you to treat this as a priority issue.

Amendments to S280
DRAFT—2/25/99

1. "Section 4

(c) **WAIVERS NOT AUTHORIZED**—The Secretary may not waive any statutory or regulatory requirement of the program or Act authorized to be waived under subsection (a)(1)(A)

...

(1) relating to . . .

...

(H) requirements of standards, assessments, components of schoolwide and targeted assistance programs, accountability and corrective action contained in Title I of the Elementary and Secondary Education Act."

Comment: This amendment does not prohibit *all* Title I waivers but only those that have to do with standards based reform and accountability. This amendment, for example, would continue to permit waivers to allow a school to qualify for school wide programs even if fewer than 50% of its students were eligible for free or reduced price lunches (the current statutory requirement). The GAO and CRS studies indicate that this has been a common use of waivers in Ed Flex states. Although problematic in some cases (e.g. where it would permit diversion of resources away from the needs of limited English proficient students in a school that is predominantly non-poor), this is an area where a reasonable case can be made for flexibility.

2. Section 4(a)

"(3) State Application

(B) **APPROVAL AND CONSIDERATIONS** —The Secretary may approve an application described in subparagraph (A) only if the Secretary determines 1) that the state educational agency is carrying out satisfactorily all of its statutory obligations under Title I to secure comprehensive school reform and 2) that such application demonstrates substantial promise . . .

(C) If the Secretary decides to approve an application, the Secretary shall issue a written opinion disseminated pursuant to the provisions of 7(f) below stating in detail the facts upon which the Secretary relies in determining that the state's application meets the requirements of paragraph B above."

Comment: One of the prime dangers of S280 is that the Secretary will continue the practice of deferring to states and issue waivers on the most general

assurances that states are pursuing comprehensive educational reform. This amendment would require states to demonstrate clearly that they are complying with the law and would require the Secretary to make concrete findings in that regard. If the sponsors really mean what they say in stating that their purposes are to assist comprehensive school reform, they should embrace this amendment eagerly.

3. Section 4(a)

"(6) DURATION OF FEDERAL WAIVERS—The Secretary shall periodically review the performance of any state educational agency granting waivers . . . and shall terminate such waivers if the Secretary determines after notice and opportunity for hearing, that the state educational agency is no longer carrying out satisfactorily all of its statutory obligations under Title I to secure comprehensive school reform as set forth in Section 4(a)(3)B(1) or that such an agency's performance. . . "

Section 4(a)(7)

"(e) ACCOUNTABILITY—In deciding whether to extend a request for a State educational agency's authority to issue waivers under this Section, the Secretary shall determine whether the State educational agency continues to carry out satisfactorily its statutory obligations under Title I as set forth in Section 4(a)(3)(1) and shall review the progress."

Comment: S280 currently has provisions that call for periodic reviews by the Secretary to determine compliance and that allow for the extension of waivers under certain circumstances. The amendments above simply incorporate into these provisions for review and extension the criteria stated in the amendment above, i.e., that the SEA is carrying out satisfactorily its Title I obligations.

4. Section 4

"(f) PUBLICATION—A notice of the ~~Secretary's decision to authorize state educational agencies to issue waivers~~ an application of a state educational agency to the Secretary under this Section shall be published in the Federal Register and the Secretary shall provide for the dissemination of such notice with an invitation to comment to state educational agencies, interested parties including educators, parents, students, advocacy and civil rights organizations. . . . Similar notice shall be published and disseminated in the event the Secretary authorizes the issuance of waivers."

Comment: If the process for issuing waivers is to be a serious one, the Secretary should invite public comment and the submission of information to assist him in determining whether an applicant state is in compliance with the law before issuing waivers. This amendment simply adds to the existing requirement in S280 that the Secretary publish his decision *after* he makes it a requirement that he publish the application *before* he makes a decision.



Leadership Conference on Civil Rights

1629 K St., NW, Suite 1010
Washington, D.C. 20006
Phone: 202/466-3311
Fax: 202/466-3435
TTY: 202/785-3859

ED-FLEX NEEDS FURTHER CONSIDERATION

The Education Flexibility Partnership Act of 1999 (S 280/Ed-Flex) has been reported to the Senate floor without hearings, and may be voted on within the next few days. The bill would allow all 50 states to participate in what up until now has been a pilot program. Under this pilot, 12 states have received waivers from the Secretary of Education allowing them to free school districts and schools from many of the requirements of federal law. The bill in its current form poses a major threat to reform efforts to provide a high quality education to disadvantaged children.

Action on S 280 should be postponed until the reauthorization of the Elementary and Secondary Education Act (ESEA) is considered by Congress later this year.

- *The bill has had no hearings in the Senate.* It was reported out of committee by a vote of 13-0 with no Democrats present.
- *More information regarding the objectives of Ed-Flex is vital to the education debate.* S 280's sponsors say that their principal purpose is to assist school reform. But whether S 280 will assist school reform is unclear. Proponents of Ed-Flex need to provide a list of the specific federal requirements they believe are impeding school reform and explain why Ed-Flex will aid school reform. This ought to happen during hearings on ESEA reauthorization. Secretary Riley has asked for postponement of Ed-Flex consideration pending ESEA reauthorization.
- *Respected, independent, nonpartisan agencies have said that we do not have enough information yet about the impact of Ed-Flex to judge its merits:*
 - In a January 1999 report by Wayne Riddle, the Congressional Research Service said "very little information is yet available regarding the effects of waivers and other major forms of flexibility on the academic achievement of the pupils served by federal programs." The report adds that "a limited amount of such information should become available in the next several months."
 - The General Accounting Office, in a November 1998 report, concluded that "many current Ed-Flex states have not established (achievement) goals or have defined only vague objectives." The report adds that these states have not established measurable objectives for evaluating the impact of waivers and that it is unclear "how the federal government could address conflicts between states' use of waiver authority and the policy objectives for the underlying federal program."

Ed-Flex legislation should not be passed until it has been amended to ensure that it will not undermine the purpose of Title I school reforms.

- *The bill in its current form actually undermines school reform.* While S 280 proclaims that its purpose is to aid school reform, once a state receives waivers it would be excused from all of the major requirements of reform – setting high standards; providing the components of schoolwide and targeted assistance programs; assessing progress of schools and school systems in reaching the standards; taking corrective action where schools and school systems do not improve. This loophole should be closed.

- *Ed-Flex should be consistent with existing school reform.* In its current form, S 280 allows the Secretary of Education to grant waivers on the most general showing by states that the application “demonstrates substantial promise” in carrying out education reform. While that might have been acceptable in the original Ed-Flex pilot project in 1994 when Title I reforms were new, the law is now sufficiently well-established that a state should be required to show full compliance with Title I law.

States and school districts should not be exempted from federal standards that hold them accountable for student achievement. As it currently reads, Ed-Flex legislation creates a major loophole that would exempt schools and districts from complying with federal standards requiring them to set high standards, assess progress of schools and school systems in reaching the standards, and to take corrective action where schools and school systems do not improve. Ed-Flex should not be enacted unless it is amended with language that would maintain rigorous standards for America's students, and assurances that schools and school systems will be held accountable for reaching these standards.

There has been no demonstration that Ed-Flex legislation is needed at all.

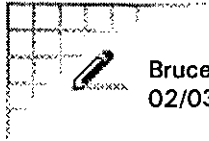
- *Title I, as reauthorized in 1994, is already a very flexible statute.* It eliminates much regulation in return for a promise of results. Now S 280 would allow the promise of results to be waived.

- *Title I has waiver provisions* that the Citizens' Commission on Civil Rights has examined and found adequate to meet state needs for flexibility.

Contacts:

Bill Taylor, Leadership Conference on Civil Rights, 202/659-5565
 Wade Henderson, Leadership Conference on Civil Rights, 202/466-3311
 Nancy Zirkin, American Association of University Women, 202/785-7720
 Cecilia Munoz, National Council of La Raza, 202/785-1670

2/24/99



Bruce N. Reed
02/03/99 02:25:01 PM

Record Type: Record

To: Karen Tramontano/WHO/EOP, Elena Kagan/OPD/EOP, Michael Cohen/OPD/EOP

cc:

Subject: Ed Flex

I spoke to Mary Elizabeth Teasley this afternoon about Ed-Flex. They're not planning to oppose it this year -- they share our view that it doesn't really amount to much one way or another. I told her the Dems' strategy of using it for amendments on class size and accountability. I asked her not to put the NEA out front in public in favor of the issue, because that would play into the Republicans' hands. She agreed -- but Karen, you may want to reinforce with Bob the next time you talk to him that while we don't have substantive problems with Ed-Flex, we want to slow this down, not speed it up.

Panels Hear Warnings On State Of Y2K Preparations

TECHNOLOGY

BOTH HOUSES OF Congress got sobering news from the Y2K front Wednesday, as the Senate Appropriations Committee and House Science and Government Reform committees heard from witnesses in the thick of the computer conversion struggle.

GAO Comptroller General David Walker told the Senate Appropriations panel that although federal efforts to fix the year 2000 computer problem have progressed, the government is still far from completing its work.

"Progress doesn't win medals," Walker said. "To get the medal you have to finish on time."

According to *National Journal's Technology Daily*, Walker estimated the federal government will need more

money to complete its year 2000 conversion. Between February 1997 and November 1998, federal Y2K costs tripled, hitting \$7.2 billion.

Although John Koskinen, chairman of the President's Council on the Year 2000 Conversion, last week assured **Appropriations Chairman Stevens** that no additional money would be needed to set federal computers on track, Walker indicated otherwise — saying the federal government has given "historically optimistic and incomplete expenditure estimates."

"My fear," Stevens said, "is that we're going to get down to the last few months of the year and the costs of testing will be so extreme we won't have any money left."

Congress appropriated \$3.5 billion in emergency funds last year for federal Y2K problems.

At the other end of the Capitol, Joel Willemssen, the GAO's director of accounting and information management, told the Science and Government Reform panels that the GAO is concerned about the distribution of federal benefit checks in 2000.

Federal programs such as food stamps and other welfare programs are run by state systems that may not be as prepared, Willemssen said.

When the GAO tested state-run federal welfare programs in August, 84 percent of mission-critical Medicaid systems failed and 76 percent of food stamp systems were unprepared.

Senate Republicans Eye Dem Support For 'Ed-Flex' Bill

EDUCATION

SENATE REPUBLICANS Wednesday outlined their education agenda, saying their education "flexibility" bill will move quickly because it has the support of some Democrats.

Last year's GOP bills encompassing education savings accounts, block granting, teacher merit pay reforms and tax-free, prepaid college tuition plans will all return as separate bills this year.

During the last Congress, Republicans consolidated those proposals into S.1, which was deemed a top priority by the Senate GOP leadership. Provisions regarding charter schools, reading excellence and full funding for the Individuals with Disabilities Education Act were signed into law. But the core provisions of S.1 were vetoed or dropped in conference committees.

This Congress, Republicans plan to make passage of Elementary and Secondary Education Act reauthorization their primary education objective. They have introduced a "shell bill," S.2, in which the ESEA reauthorization will be placed once it is written later this year by the Senate Health, Education, Labor and Pensions Committee.

The ESEA reauthorizes federal fund-

ing for primary and secondary education, and likely will become the lightning rod for conservative proposals to block grant all education funds, allow school prayer and curb sex education.

GOP leadership aides said they hope to quickly move the so-called Ed-Flex proposal authored by Sens. **Bill Frist**, R-Tenn., and **Ron Wyden**, D-Ore.

The bill would expand to all states an already existing pilot program that allows them the power to grant individual school districts temporary waivers from some federal requirements.

In return for that flexibility, states must comply with core federal principles — such as civil rights — so long as states make progress toward improving students' education.

But the plan is not a block grant; states must still use the funds for the student populations for which it was originally intended. Maryland, one of the 12 pilot states, used its waiver to provide one-on-one tutoring for grade school students.

A Democratic aide said Senate Democrats want to review the pilot program results before expanding the program, adding that all "flexibility issues" will be addressed as part of ESEA.

On the tax front, Republicans will resurrect a plan by **GOP Conference Secretary Paul Coverdell** of Georgia to allow parents and other sources to contribute \$2,000 a year per child to an education savings account. The interest earned on the money would be tax-free.

While the Coverdell education accounts are similar to the \$500 college savings accounts backed by President Clinton, Democrats oppose their use for students attending private schools and argue the tax benefits for middle-class families with young students is negligible.

A bill by Sen. **Jeff Sessions**, R-Ala., builds on a proposal last year to make tax-free all accumulations of interest and withdrawals from prepaid college tuition plans. This year's proposal also would give tax-free treatment to private college prepaid tuition plans.

A limited block grant plan by Sen. **Tim Hutchinson**, R-Ark., would consolidate 30 education programs into block grants to the states. Republicans are expected to pursue a broader block grant plan in the ESEA reauthorization and appropriations bills.

— BY MATTHEW MORRISSEY

Chafee Picks Up Clinton's Call To Curb Urban Sprawl

ENVIRONMENT SENATE Environment and Public Works Chairman Chafee Wednesday kicked off his committee's first meeting with a new call to pass a bill to curb urban sprawl — an issue highlighted by President Clinton in his State of the Union address. Chafee also renewed pledges to act on Superfund reform, Endangered Species Act reauthorization and EPA oversight.

Chafee referred to Clinton's \$1 billion "Livable Cities Initiative" and said the flurry of urban sprawl ballot initiatives approved by voters in November sends a message to Congress — and the committee — to examine the issue.

"I hope that we can sort through the proposals and report [a bill] to the full Senate," Chafee said.

Later, Chafee told *CongressDaily* that he has not fully reviewed Clinton's proposal and does not know how much money should be allocated to fight sprawl. But he expressed interest in renewing a program to give states matching funds for "smart growth."

Sen. Ron Wyden, D-Ore., said smart growth issues should be included in the jurisdiction of the panel's Transportation, Smart Growth and Infrastructure Subcommittee.

Also at the meeting, Chafee said the committee will continue work on several issues that have consumed much of the committee's time over the years.

He pledged to approve Superfund legislation "soon," to pass water resources legislation early in the year and to hold hearings on the Resource

Conservation and Recovery Act. He repeated a promise to push his bill to give credits to companies that voluntarily reduce greenhouse gas emissions before legislation is approved. Chafee said he has an "aggressive oversight agenda" for the EPA, but declined to be more specific.

Chafee also announced the Drinking Water, Fisheries and Wildlife Subcommittee would now be called the Fisheries, Wildlife and Drinking Water panel.

Also, Clean Air, Wetlands, Private Property and Nuclear Safety Subcommittee Chairman James Inhofe, R-Okla., said he will hold a Nuclear Regulatory Commission oversight hearing on Jan. 28.

— BY BRODY MULLINS

Supreme Court Again Hears Case On N.C. Redistricting

POLITICS THE SUPREME COURT, intent on minimizing the use of race in drawing election districts, heard arguments Wednesday in a North Carolina case that could have enormous influence on redistricting nationwide after the 2000 census, the *Associated Press* reported.

In a spirited session, the justices wrestled with a key issue: How much evidence is needed to conclude that an election district is the product of unlawful gerrymandering because racial considerations played too large a role?

A redistricting plan based on partisan politics cannot be ruled unlawful just because "it happens to correlate with race," Washington attorney Walter Dellinger argued in defending the makeup of North Carolina's 12th District, now represented by Democratic Rep. Melvin Watt.

"This is a Democratic district that makes sense," Dellinger told the court.

But Robinson Everett, the Durham, N.C., attorney representing voters who successfully challenged the 12th District in a lower court, said state legislators had "used code" in considering how to draw it in 1997.

"They said 'Democrats' but these

are particular Democrats who are African-Americans," Everett contended in discussing how some of the district's boundary lines were drawn.

In a series of decisions since 1993, the Supreme Court has scuttled attempts by state and local legislators to draw districts to preserve or enhance minority candidates' chances to win if race was a "predominant factor." Most of those rulings were reached by 5-4 votes that traced the court's ideological divisions.

Redrawing 12 congressional districts after the 1990 census, the North Carolina Legislature created two majority-black districts in 1992 — the 1st and 12th — and voters that year sent the state's first blacks to Congress since 1901.

That 1992 redistricting sparked two Supreme Court decisions, one in 1996

that struck down the 12th District as unlawful. The state legislature redrew the district in 1997, one in which blacks comprise 47 percent of registered voters.

A three-judge federal court ruled last April that the 1997 plan was unlawful, too. The three-judge court did not conduct a full trial but made what lawyers call a "summary judgment" after considering the district's shape and its racial makeup.

Justice Sandra Day O'Connor, a key member of the highest court's slender majority in past redistricting cases, appeared sympathetic Wednesday to North Carolina's district-drawing efforts.

"There may well have been sufficient evidence to preclude the [lower] court from granting summary judgment," she told Everett at one point.

But Justice Antonin Scalia seemed to think the three-judge court was entitled to take recent history into account.

"This is a legislature that has been pulled, kicking and dragging, into drawing a district that does not take race into account," Scalia said.

Questions and comments from other justices suggested the court may well be closely divided again. A decision is expected by late June.

"This is a legislature that has been pulled, kicking and dragging, into drawing a district that does not take race into account,"
Scalia said.

Ed-Flex Guidance
January 28, 1999

Q: What does the Administration think of yesterday's 10-0 vote in the Senate Health, Education, Labor and Pensions Committee on the Frist-Wyden Ed-Flex bill?

A. We are deeply disappointed at the partisan way in which the vote was conducted. These are issues we should be working on together. The President strongly endorses the principle of greater flexibility in federal education programs tied to greater accountability for results, and last year he supported a responsible Ed-Flex bill. He believes it would make much more sense to consider Ed-Flex as part of the overall reauthorization of the Elementary and Secondary Education Act. This will ensure that Congress designs Ed-Flex to fit the federal education programs of the next five years, rather than the last five years. The Administration's ESEA reauthorization bill, to be transmitted in March, will contain such a proposal. In any event, this is an issue we ought to be working on together, and not turning into a partisan issue.

Educ - Ed Flex
and
Educ - charters



Michael Cohen
10/08/98 08:19:24 PM

Record Type: Record

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

1. **Charters:** should come up for a vote in the Senate tonight and go to the House tomorrow. No problems expected in the Senate; the only House problem we are worried about is Goodling--his staff says he doesn't want us to have any more bill signings, and may force this into the omnibus bill. Hard to know whether to take his staff seriously.

2. **Literacy:** Goodling's staff is telling ed. groups, as well as Broderick Johnson and Scott Fleming, that they are holding the literacy bill until they get what they want on the testing language. However, Goodling himself denies this and has told Riley and the press that he has a problem with a Judd Gregg provision that requires a set funding increase for IDEA before the reading bill can be funded. He is talking about changing the provision and sending this back to the Senate; a strategy which on its face makes no sense, and lends some support to the idea that he is diddling around with the bill until he gets what he wants on testing.

I think Brod. should push back on Goodling's staff, and tell them that linking literacy and testing, or trading one for the other, is simply unacceptable to us. Kennedy's staff, Brod. Johnson, and ED staff and I think we should call Goodling's bluff, and that he will let the literacy bill go. Kennedy is ready to go to the floor and to put out a press release attacking Goodling for tying up the bipartisan bill, and for blocking efforts to help kids learn to read by opposing higher standards and tests and better teachers and tutors.

Elena--are you seeing anything in the omnibus negotiations that suggests Goodling is making this linkage?

3. **Voc-Ed bill.** Is reportedly coming to the floor in the House tonight, and the Senate tomorrow. No one has yet gotten their hands on the conference report and knows in any detail what is in the bill--but the Voc. Ed folks in ED are sure we like it.

4. **Ed-Flex.** Our preference remains to use Ed-Flex as a bargaining chip in the negotiations over block grants. Our preferred Ed-Flex bill is one sponsored by Castle and Roemer. Goodling is now also championing Castle/Romer--but has deleted a provision that requires states to have a Goals 2000 education reform plan in order to be eligible for Ed-Flex (this provision is symbolically important to us, but we can live without it if we can't get it back in the bill). Goodling is reportedly planning on adding Ed-Flex to an Assistive Technology bill--perhaps in a move to take it out of play in the omnibus negotiations. However, like much of what Goodling is up to, this move makes no sense, since the bill has already passed the Senate and would have to go back there if Ed-Flex is added--where it would most likely die (or get added to the omnibus).

The governors, who have been working with Castle, know nothing about Goodling's move. They think Ed-Flex is already in the Labor/HHS bill (though they don't know if that's the bill that was taken up on the floor of the House, or in the omnibus bill).

Given this confusion, right now I think we simply stick to our plan--use Ed-Flex as a bargaining chip. If we get block grants out without using Ed-Flex, and if Castle/Goodling try to add it separately, we should fight to get our Goals 2000 provision back in, but not fall on our sword if we don't succeed. We can live with the provision as is, as long as we don't look to happy about it.

October 8, 1998

MEMORANDUM TO ELENA KAGAN

FROM: Fred DuVal

CC: Mickey Ibarra
Mike Cohen

SUBJECT: Ed-Flex

It appears likely that tobacco won't get off the ground, and it is certain that the governors will lose on Indian gaming.

Ed-Flex is my only opportunity for good news - of their three priorities (please see attached document.)

We really need your help. Thanks.



STATE OF DELAWARE
OFFICE OF THE GOVERNOR

THOMAS R. CARPER
GOVERNOR

MEMORANDUM

TO: DEMOCRATIC GOVERNORS
FROM: GOVERNOR TOM CARPER, NGA CHAIR
GOVERNOR PEDRO ROSSELLO, DGA CHAIR
DATE: September 17, 1998
SUBJECT: DGA CONFERENCE CALL 5 PM TODAY

It is unlikely that either of us will be able to participate in today's conference call with Erskine Bowles and Jack Lew. However, it is imperative that we take this opportunity to raise a number of issues of importance to governors. We have attached talking points on three top priorities: Ed-Flex, tobacco recoupmnt, and Indian Gaming, and are asking that you raise these issues during today's call.

It is likely that the Administration will play a key role in meetings with Congressional leaders to hammer out an overall deal to fund the government for the next year. White House support for these top priorities is critical.

ED-FLEX

- Expansion of the current Ed-Flex Demonstration program this year is a top priority for Democratic governors and NGA. The President proposed in February at the NGA meeting to extend Ed-Flex to all states that meet certain criteria. NOW is the time to extend Ed-Flex to all states.
- NGA worked with Senators Wyden and Frist and with Representatives Castle and Roemer and with the Administration in drafting a bipartisan bill to ensure that the new flexibility includes strong accountability requirements.
- Many states are doing tremendous things in the area of school reform – the majority of states passed accountability and class size reduction initiatives in this legislative session. This flexibility will enhance the reforms that are taking place in the states.

TATNALL BUILDING
DOVER, DELAWARE 19901
(302) 739 - 4101
FAX (302) 739 - 2775

CARVEL STATE OFFICE BLDG.
WILMINGTON, DELAWARE 19801
(302) 577 - 8210
FAX (302) 577 - 3118

- Some Democrats have expressed some concern that Ed-Flex would eventually lead to an education block grant (similar to what the Dollars to the Classroom bill tried to accomplish). Governors oppose that bill; however, there is strong bipartisan support for Ed-Flex. Ed-Flex does not allow states to combine federal, state, and local funds.
- Furthermore, Ed-Flex could actually circumvent the push for education block grants while ensuring that the new flexibility comes only with requisite accountability because: 1) states must have established plans for school improvement and must be accountable for results; 2) states must be willing to grant local school districts waivers of state rules; and 3) it will bring greater coordination to the administration of federal education programs.
- The Ed-Flex bill is budget neutral.

TOBACCO RECOUPMENT PROTECTION

- HCFA sent letters to all states last year asserting the federal government's rights over state tobacco settlement dollars using an obscure provision in federal Medicaid law. Without repeal of that provision all states with settlements and states that settle in the future could be required by HCFA to give more than half of their settlement dollars to the federal government.
- HCFA's logic is that since the lawsuits were brought on behalf of the state/federal program Medicaid that the federal government deserves its share.
- However, most states have little or no Medicaid claims involved in their lawsuits. Most states assert a variety of claims including consumer protection, fraud, racketeering, antitrust violations and health care costs
- States brought these suits with no assistance from the federal government and the federal government retains the ability to sue for their own costs in federal programs such as Medicare and Veterans.
- Without repeal of the HCFA recoupment provision state settlement funds will be tied up for years in negotiation and/or litigation with the federal government. The funds will be unavailable for state efforts to curb teen smoking, improve children's health or expand child care and education programs.
- There is Republican leadership support for providing all states with protection from HCFA recoupment. They are ready to attach this protection to the continuing resolution to fund the government.
- Governors have agreed on a mechanism to pay for this provision with each state with a settlement paying a proportionate share to offset the \$1.2 billion cost over 5 years to the federal government.

INDIAN GAMING

- The Enzi-Sessions amendment to the FY1999 Interior appropriations bill passed the Senate under unanimous consent on Tuesday, Sept. 15th.
- The Amendment would continue the current moratorium preventing the secretary of the U.S. Interior from using federal funds to approve tribal-state compacts that have not first been approved by the state, as required by law.
- The amendment would also prohibit the secretary from promulgating a regulation or implementing a procedure that could result in tribal Class III gaming in the absence of a tribal-state compact or from going forward with any proposed rule on this matter in FY1999.
- Under the Secretary of Interiors' proposed rule, tribes can by-pass states when they feel states are not negotiating in good faith and when states assert sovereign immunity in court proceedings.
- The Secretary's proposed rule would preempt states' authority under existing laws and would give tribes incentive to avoid negotiating gambling compacts with states.
- Governors feel that since the Secretary's inherent authority includes the responsibility to protect the interests of the tribes, there would be a serious conflict of interest where the Secretary asserts judgment over disputes between states and tribes.
- The Enzi - Sessions amendment does not affect current Tribal-State gambling compacts that are already in effect. This amendment would also continue to give the Secretary the ability to approve compacts mutually agreed to by Tribes and States.
- Governors, along with the nation's Attorneys General are currently in negotiations with Tribes, the Department of Interior, and the Department of Justice, to find feasible solutions to concerns both parties have with the Indian Gaming Regulatory Act.
- Governors urge the President to include the Enzi - Sessions amendment in a CR, giving all interested parties time to come to an agreement.



DEMOCRATIC GOVERNORS' ASSOCIATION

DEMOCRATIC GOVERNORS RESOLUTION EXPANSION OF ED-FLEX

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Katherine Whelan
Executive Director

In February of this year, the President announced his intention to pursue legislative action to allow all states and territories that meet certain requirements to participate in the Education Flexibility (Ed-Flex) Partnership Demonstration program. The Ed-Flex demonstration program was established by the Goals 2000: Educate America Act. In exchange for results, Ed-Flex provides states with the authority to waive certain Federal statutory and regulatory requirements affecting State and local school districts. Twelve states currently participate in the Ed-Flex program: Colorado, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, New Mexico, Ohio, Oregon, Texas, and Vermont.

In partnership with the Administration, Democratic Governors have worked with Senator Wyden and Senator Frist to introduce legislation, S 2213, that will provide state and local governments with needed flexibility in exchange for enhanced accountability.

Democratic Governors call on the Congress to quickly pass S 2213, the Education Flexibility Amendments of 1998. This legislation, which is co-sponsored by Senator Wyden and supported by the President and Education Secretary Riley, will provide state and local flexibility from federal requirements to support locally-designed, comprehensive school improvement efforts. Most importantly, S. 2213 will provide all states and territories with an increased incentive to strengthen state efforts to adopt meaningful standards and assessments with greater accountability.

Approved on August 3, 1998
Milwaukee, Wisconsin

NOTE TO BRUCE REED AND ELENA KAGAN

Below is the basic approach to an education block grant that I sent to Mike Smith over the weekend, modified slightly so you could better understand it. Mike is basically ok with this. Let me know what you think.

It involves combining Goals 2000, Title VI (The Republican block grant that already exists and for which we never seek funding), and the Eisenhower Professional Development Program into a \$1.2 billion or so block grant. It also involves expanding Ed-Flex (in which states are given the authority to waive federal education requirements) from a 12-state demonstration program to a 50 state program.

Riley is on board with this approach, but hasn't really focused on the details yet. Mike is going to involve some the key program staff on this over the next few days, to keep them on board.

We are aiming for this as a POTUS announcement when he meets with the gov's at the end of the month. This package is very close to what NGA is developing at Voinavich's initiative. Once this is a bit more firmed up, we'll develop a strategy for reaching out to the Dem. Govs. I don't want Voinavich to find out too soon that we are close to him--he will just try to push the envelope further.

1. We should describe this package as building on Goals 2000, even as we change the name and build in even more flexibility and streamlining. To avoid the charge of suddenly abandoning our top priority over the five years, we should be clear in our initial rhetoric that this proposal is building on the most important features of Goals, and expanding them. Since we have always called Goals 2000 a "responsible block grant" and since Ed-Flex is part of Goals 2000, this is not an unreasonable stretch.

We can accomplish this in several simple ways:

- o **Purpose of the Block Grant:** The purpose of this program is to help states and local school districts undertake the education reforms necessary to help all students reach challenging state standards in the basics and advanced skills in academic subjects.
- o **Underlying Principles:** Our rhetoric should stress that the program is built on the same principles that have been the foundation for Goals 2000: (1) high expectations and challenging academic standards for all students; (2) accountability for results; (3) maximum flexibility in the use of funds in order to achieve results; (4) investing in strengthening quality and increasing capacity. We should also stress another principle, not directly tied to Goals, of getting \$ to the local schools.
- o **Make Ed-Flex expansion a part of the Block Grant proposal, not a separate piece.** This reinforces that our legislative proposal is an extension of Goals 2000. In addition, we can require states that want Ed-Flex to have a strong school accountability plan (instead of an approved Goals 2000 plan), in ways that link to the overall accountability requirements for the block grant.

2. States should have some discretion in how they allocate funds, linked to the accountability requirements of the program.

Funds would be distributed to states according to a formula that would get each state the same share of funds that it now receives from the 3 programs. ED has initially proposed that the block grant include a formula for the substate allocation of funds. Below, I've proposed an alternative approach, which Mike seems comfortable with:

I'm not sure that we should have a substate formula as you suggested, especially if we are looking for some way to align this proposal with the governors. Substantively, I'd like to retain for states the ability to incorporate these funds into a broader statewide strategy, to preserve the benefits of having local districts compete for funds, and to have the ability to use the funds as incentives for forming partnerships between districts and other organizations (e.g., IHE's- especially for teacher training and professional development, or business and community groups for other purposes).

As an alternative, I'd suggest an approach with the following elements:

- o **Drive the funds to the local level:** States would have to give out 95% of the funds to LEA's or partnerships involving LEA's.
- o **Protect high poverty districts.** As we have proposed in class size, states should be required to guarantee high-poverty districts at least their "Title 1 share" of the funds.
- o **Give states flexibility in how to use the rest of the money to achieve the purposes of the program, to help all kids reach state academic standards.** States should be free to use the funds in any fashion that will help kids reach their own state academic standards, consistent with the state's own reform strategy. This would leave states free to distribute the funds according to a formula, or competitively. States could determine the purposes for which the funds could be used--very targeted, or very flexibly.
- o **Require states to issue annual statewide report cards, and district by district (or school by school) report cards.** States should be required to issue annual statewide report card, showing student progress toward reaching academic standards on a statewide basis, and disaggregated by socioeconomic level, race/ethnicity, and gender. Report card should also report on high school completion rates, and other indicators of the effectiveness of the system, as determined by the state. Report cards must also be issued on a district-by-district basis (though in local control states such as Iowa, without uniform state academic standards, these report cards can reflect somewhat different indicators of achievement).
- o **Require the accountability and performance data to inform the use and distribution of the funds.** The state must describe to the public and the Secretary (but no approval required) how its use of the funds will help increase the number of kids meeting state

standards and reduce the achievement gaps revealed by the report cards. States would still have the flexibility to determine how the money would be used; this requirement simply makes the state take into account the accountability data in determining how to best use the funds. (This is why I think we need local district or school report cards as well as state report cards). It will also exert some pressure on state to target additional funds to low performing schools.

3. Ed-Flex should clearly be built on accountability for results. In addition to whatever requirements are necessary to ensure that programatic funds are used for the purposes as intended, the basic requirement for states to get Ed-Flex is that they have a rigorous approach to holding schools and districts accountable for results, including school and district report cards with disaggregated data and some form of meaningful intervention in low performing schools/districts. In addition, I believe that Ed-Flex already requires states to demonstrate the same kind of flexibility with respect to its own requirements as we are prepared to offer; we should retain this approach and strengthen it if necessary based on what we have learned so far.