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PROPOSALS FOR REAUTHORIZING THE ELEMENTARY AND SECONDARY EDUCATION ACT THREATEN STATE AND LOCAL CONTROL OF EDUCATION

INTRODUCTION

Members of Congress soon will vote on a substantial expansion of federal control over America's public schools embodied in proposed changes to the Elementary and Secondary Education Act (ESEA). This legislation authorizes \$10 billion of federal programs, including \$6.3 billion for the Chapter 1 program serving disadvantaged youngsters, and has a major impact on the approximately 90 percent of school districts that receive such funds. New provisions added to Chapter 1, the largest federal K-12 education program in the reauthorizing legislation, would increase federal influence significantly in areas of education traditionally the responsibility of states or localities. Unfortunately, however, there is no reason to think this increased federal authority would help disadvantaged youngsters. These changes in current law are embodied in H.R. 6, sponsored by Representative Dale Kildee (D-MI), which has passed the House of Representatives, and S. 1513, sponsored by Senator Edward Kennedy (D-MA), which is under consideration in the Senate.

Given the pattern of poor performance in American schools, most policy makers recognize that genuine change in American education is necessary. Parent groups, educational reformers, and teachers all over America are fighting to improve education, battling entrenched bureaucracies that defend the *status quo*.¹ Serious reform also is necessary in federal programs. Abt Associates, an independent consulting group, recently conducted a large-scale evaluation of students participating in the Chapter 1 federal compensatory education program. The study shows that these students continue to fall farther and farther behind other students as they progress through school.² In fact, it found no difference in academic

1 See, for example, Allyson M. Tucker and William F. Lauber, *School Choice Programs: What's Happening in the States*, 1994 edition (Washington, D.C.: The Heritage Foundation, May 1994).

2 Abt Associates, *Prospects*, cited in U.S. Department of Education, *Reinventing Chapter 1*, February 1993, pp. 99-104.

achievement between students who receive federally financed services under the Chapter 1 program and comparable students who do not participate.³

These failures have come about despite almost thirty years of well-intentioned efforts to address educational equity through increased federal spending and regulation since the program began in 1965. The reauthorization legislation would increase an already intrusive federal role in education by expanding federal oversight over curriculum content and student assessment. In addition, the House has mandated that states develop "opportunity-to-learn" standards addressing resources for classroom operation, but has not provided the federal money to pay for these resources. In its consideration of ESEA reauthorization, the Senate should reject any new federal mandates and give states and localities a freer hand to set their own academic standards and experiment with innovative reform ideas like school choice and charter schools.

THE CLINTON ADMINISTRATION'S PROPOSAL

The Clinton Administration, for its part, proposed a \$700 million increase in Chapter 1 (renamed Title I in the new legislation) as part of the federal government's Fiscal Year 1995 budget request. The Administration's proposal, the "Improving America's Schools Act," includes several programmatic improvements. These include funneling a greater percentage of the funds to students who are truly disadvantaged; allowing the Secretary of Education to waive certain federal laws if they hinder state or local reforms; and provisions intended to heighten attention on improving results. The Administration hopes to improve results by setting higher academic standards for disadvantaged students, measuring students' progress toward these standards, and encouraging accountability for schools and districts based on whether students are reaching the standards. Such proposals respond to numerous studies that have found standards are too low for disadvantaged students. Most recently, the Chapter 1 evaluation by Abt Associates discovered that the same level of student competence is awarded an "A" in inner-city schools and a "C" in the suburbs.⁴

The Clinton Administration also has proposed a limited charter schools program that would provide start-up funds to assist new schools of choice created under innovative state charter school laws. Charter school laws, one of the most popular avenues for reform being pursued at state and local levels, are market-oriented reforms that allow educators to start their own public schools with streamlined regulation and to be held accountable on the basis of results.

While the Administration's proposal contains these improvements in the program, unfortunately a number of key provisions would also establish far greater direct federal control over state and local education. This is especially true in the crucial areas of curriculum and assessment of student performance. Specifically,

3 *Ibid.*

4 *Ibid.*, p. 198.

the Administration's proposal would require that state standards and curricula be approved by the Secretary of Education. In addition, it would abolish the highly popular Chapter 2 block grant program, replacing it with a more restrictive teacher training program. Created by the Reagan Administration from several smaller programs in the early 1980s, Chapter 2 provides local school reformers with one of their few flexible funding sources. The Administration would replace it with a Washington-mandated teacher training program, taking control back from the states, despite the fact that few effective models for this proposed federal program currently exist. The message to local educators and teachers who are on the front lines is clear: Washington does not trust them to spend even a small fraction of the education budget.

EDUCATION BILLS IN THE HOUSE OF REPRESENTATIVES

The House of Representatives' stormy consideration of its version of the bill to reauthorize the ESEA (H.R.6) led to a number of changes in the Administration's original proposal. Representative Tom Petri (R-WI) worked out a compromise with Elementary and Secondary Education Subcommittee Chairman Dale Kildee on the difficult issue of the Title I funding formula: future spending beyond the current level (approximately \$6.3 billion) would be disbursed through a new formula that targets a greater proportion of funding to disadvantaged students. For a federal program justified entirely on the grounds of educational equity, this is long overdue. In another significant change, the House wisely resisted the Clinton Administration's attempt to abolish the Chapter 2 block grant program and replace it with a more restricted program. Strong support from local educators across the country was instrumental in saving this important program and preserving local flexibility.

Protecting the Home Schoolers

The most highly charged House debate on H.R. 6 resulted from a committee amendment by Representative George Miller (D-CA) mandating that all teachers in school districts receiving federal funds be certified in every subject they teach. This would have severely limited local flexibility to use alternative certification, despite the lack of empirical evidence that certified teachers are more effective than noncertified teachers, and would have prevented schools from addressing critical personnel shortages or recruiting talented professionals from other fields by bringing, for example, engineers interested in teaching mathematics or practicing artists to teach the arts.

Beyond this stifling effect on local public schools, the Miller amendment's broad and ambiguous language raised legitimate fears that it could be used as a weapon against the increasing number of parents who educate their children effectively in the home. Home-schooling parents protested, and the House overwhelmingly passed amendments deleting the offensive Miller language and prohibiting the federal government from attempting to control home schools, private schools, or religious schools.

More Federal Control Over Local Public Schools

But despite these improvements, H.R. 6 preserves most of the deeply flawed policy prescriptions in the Administration's original ESEA proposal. It also includes some highly troublesome amendments added in the House, several of which would substantially expand federal authority over everyday schooling, not only for disadvantaged students, but for all students. Adding to the Administration's provisions expanding federal oversight over curriculum content and student assessment, for instance, the House has mandated that states develop "opportunity to learn" standards addressing resources for school and classroom operation.⁵ These constitute yet another federal mandate on the states and are an attempt to force states to increase spending through increased federal regulation without providing the federal revenues to pay for it.

HOW CONGRESS CAN IMPROVE THE ESEA

Instead of expanding direct federal control over state and local school administrators and teachers, Members of Congress can support local and state efforts to improve public education without compromising the freedom of local educators, teachers, and parents. To do so, they should be guided by five principles.

PRINCIPLE #1: Congress should preserve state and local authority over standards for curriculum content and student performance.

Under both the Administration's proposal and H.R. 6, receipt of Title I, Part A (formerly Chapter 1) funds by the states is contingent upon approval of state curriculum content and student performance standards by the U.S. Department of Education. As part of the plan that all would be required to submit to the Education Department, states would have to provide descriptions of their standards for curriculum "content" and student "performance." The legislation requires that states which have such standards for all students must "demonstrate" this and that their standards must be approved by the Secretary of Education. States that do not want such standards for all students still must include a plan for developing them for students served under Title I. This may seem a limited option; in practice, however, it would be awkward for a state—even more so for a district—to implement the detailed standards envisioned in this legislation for only a fraction of its students. Thus, Title I money is meant as a lever to force states to introduce federally approved standards for all students. The Administration's original proposal bluntly required states to develop standards for all students and receive federal approval in order to continue to receive Title I funds.

Previously, the Clinton Administration had maintained that federal approval of such standards, as provided in GOALS 2000, would be strictly voluntary. Now, however, it seems that the "stick" of denying Title I funds will be used to "persuade" states that might have considered declining the Goals 2000 "carrot."

5 For an analysis of Goals 2000 and its likely effects at the state and local levels, see Theodor Rebarber, "Goals 2000: Help or Hindrance?," *Network News & Views*, Hudson Institute, Educational Excellence Network, May 1994, pp. 62-64.

While the legislation is ambiguous as to how the Department of Education is to determine that states have developed “high-quality” content and performance standards, it is hard to imagine any meaningful process other than federal evaluation of actual state standards. Senior officials in the Education Department have publicly indicated their interest in influencing the “quality” of such state standards even though there is no reason to think they are better qualified for such a role than state and local educators.

Congress should not reassign state and local responsibility to the federal government in this vital area of American life. A proposed disclaimer provision maintains that the Education Department may not dictate the “specifics” of such standards, but it leaves undefined what would be too specific. This is an enormous opening for direct federal intervention.

The Administration argues that this change is a remedy for disadvantaged students who suffer from watered-down curricula and lower expectations under the Chapter 1 program. Officials claim that higher standards, especially standards for all students in a state, would enrich curricula and raise expectations for these students. But addressing this problem does not require federal approval of state curricula and student expectations—an approach that would limit state flexibility and stifle local innovation.

Policy Recommendation: Federal requirements should be considered satisfied if states develop academic standards through an open and careful process, or if standards established for disadvantaged students are the same as those for other students. The legislation should prohibit the federal government from conditioning Title I funding on federal approval of actual state standards.

PRINCIPLE #2: Congress should preserve state and local authority over student assessment, including how testing results are used by states and localities.

Under both the Administration’s original proposal and H.R. 6, the U.S. Department of Education must approve the assessments that states are required to develop based on federally approved standards for curriculum content and student performance. Furthermore, both the House and Senate versions require states to obtain Education Department approval for the “validity” of the ways in which they intend to use the results of these assessments. In other words, the federal government can tell the states that they may not use the results of these assessments for graduation, progression to the next grade, or any other purpose, essentially rendering these assessments useless.

Even if federal approval were not an unnecessary and potentially dangerous intrusion into state and local use of assessment information, there is no agreed-upon method for conclusively demonstrating the validity of assessments and their use. Fierce debates rage within the testing community, with some even holding that none of today’s tests should be considered valid because they do not fully capture students’ “authentic” creative and cognitive abilities. Some of those who have pushed for greater federal control in this area even are dogmatically opposed to the widespread state practice of requiring students to pass competency tests for

graduation or promotion. Others assert that in order for such assessments to be considered valid, students must be provided with what they judge to be adequate and equitable resources before taking the assessment. A number of these “experts,” as well as certain self-proclaimed advocacy groups, see an enhanced federal role as a way to force states both to increase spending on education and redistribute funds more equally.

Such broad policy decisions on the use of assessment results, and especially of resources, traditionally have been the provenance of individual states and communities. States already address technical and fairness issues relating to the validity of student assessments in their normal policy processes. With regard to fundamental issues of fairness and testing, the courts also play a continuing role in protecting the rights of students on the basis of current law; students and families who feel their rights have been violated because of state assessment practices can, and do, challenge such practices on existing legal grounds.

Policy Recommendation: In judgments regarding the validity of state or local assessments, federal intrusion into how assessment results are used, or into determining the adequacy or equity of resources, should be strictly prohibited.

PRINCIPLE #3: Congress should protect state and local authority over the resources that states and communities spend on education and over the school and classroom processes that provide students with an “opportunity to learn.”

Perhaps the most dangerous foot in the door toward increased federal regulation of local schools is the requirement incorporated by the House in the form of an amendment to H.R. 6 that states develop and submit for approval to the federal Education Department standards addressing students’ “opportunity to learn,” formerly called “delivery standards.” This applies to all districts receiving Title I funds.

This would result in federal authority over the quality of school curricula, instructional materials, “and other school resources” and their alignment with a state’s content and performance standards, as well as over the ability of teachers to provide “high-quality” instruction within each subject area. As with the standards for curriculum content and student performance, there is a vague disclaimer stating that the Education Department may not determine the “specifics” of such standards, but this gives taxpayers and local school officials little guidance on what may or may not be prohibited and still leaves Education Department officials with enormous scope to regulate.

Congressional liberals who support this provision make little secret of their interest in using such standards to force states to increase and equalize spending on education. Even if the federal government made no use of its power to interfere directly—which is unlikely—state opportunity standards would encourage the preservation of today’s excess regulation and bureaucratization of public schools, a major obstacle to necessary reforms. Indeed, the original amendment in committee included a long list of areas that would be covered, ranging from instructional materials and laboratory facilities to “gender equity” policies and much else.

The full House did reduce the number of areas included and noted that actual implementation by the state, districts, and schools should be voluntary. In addition, because of the likelihood that such standards would become the basis for an avalanche of lawsuits, the full House also added legislative language noting that a new legal cause of action was not being created. But these weak limitations are at best wishful thinking. They do not de-fang federal mandates for "opportunity-to-learn" standards and their potential for enormous damage to local school autonomy and to the personal and professional freedom of local educators.

Usually, those who file equity suits in state courts already possess a cause of action under their state constitution. This legislation may not create an entirely new cause of action, but it would provide new evidence and assistance to those suing under existing legal precedents. Because all these entanglements provide so little benefit at the cost of diverting attention from real educational reform, many states already are trying to move away from such regulatory standards. In fact, in a March 1994 letter to Governor Carroll Campbell of South Carolina, President Clinton stated his unshakable conviction that such standards have no place in this bill: "Both the Department of Education and my staff here at the White House will work vigorously at every stage of the legislative process to ensure that when the ESEA reaches my desk, it does not contain opportunity to learn standards."⁶

Despite President Clinton's words, his Administration's position is far from clear on the use of "opportunity to learn" standards to stifle state reforms. For example, the federal Education Department recently filed suit against the state of Ohio's plan to use its new student standards and assessment system as the basis for granting high school diplomas. While the Department's stated objection was a disparity of performance among racial groups, the Administration was quick to explain that its real interest lay not in the assessment itself, but in gauging whether Ohio's education system had provided an adequate "opportunity to learn" to its students. Albert Shanker, president of the American Federation of Teachers, has noted that this rationale raises the question of whether the Clinton Administration is really serious about raising standards for students.⁷

Policy Recommendation: President Clinton's stated position should prevail.

Federal mandates for "opportunity to learn" standards have no place in legislation designed to improve local schools.

PRINCIPLE #4: Congress should prevent partisan or political influence over the National Assessment of Educational Progress.

Although the Clinton Administration has recommended that the current National Assessment of Educational Progress (NAEP) governing structure be retained, amendments to H.R. 6 have sought to abolish or substantially weaken NAEP's independent Governing Board. The NAEP, sometimes called "The Nation's Report Card," is the only quality measure of the overall health of Amer-

6 Bill Clinton, letter to South Carolina Governor Carroll Campbell, March 3, 1994, p. 2.

7 Albert Shanker, "Where We Stand: Standards in Ohio," advertisement, *The New York Times*, May 1, 1994, p. E7.

ica's education system. Overseen by its independent National Assessment Governing Board, the NAEP periodically reports on student achievement in various subjects. The makeup of the Governing Board, as well as other aspects of the current NAEP structure and mission, were the result of recommendations made in the mid-1980s by a blue ribbon panel which included former Secretary of Education Lamar Alexander and Hillary Rodham Clinton, while she was First Lady of Arkansas. The current Board structure was approved in bipartisan legislation in 1988, and the first Governing Board was appointed later that year by then-Secretary of Education William Bennett. The Board, which itself nominates new members to replace those whose terms expire, has included a broad range of Republicans and Democrats and operates in a nonpartisan manner; past members include the current Secretary of Education, Richard Riley.

The NAEP survey focuses on rigorous academic content and provides only aggregated results at the national and state levels (no results for individual students are maintained). But because it reports overall student achievement in light of rigorous student standards, and because its findings often document the inadequacies of the current education system, it has earned the wrath of establishment education groups. A House amendment to H.R. 6 substantially weakens the policy oversight authority of NAEP's independent governing board and also weakens the NAEP's academic standards for students. Oversight authority is to be shared with the federal Education Department, which would increase NAEP's vulnerability to political pressure and manipulation. The loss of an independent NAEP, the most reliable measure of the current state of American education, would be a significant blow to education reform.

Policy Recommendation: Congress should retain the National Assessment Governing Board in its current independent policy role, which includes setting challenging standards for student achievement, so that NAEP can remain non-political and continue to provide honest reporting on the quality of U.S. education.

PRINCIPLE #5: Congress should enact an effective federal charter schools program that maintains state and local flexibility and does not discourage ambitious state charter school reforms.

Charter schools, an attempt to create market-type entrepreneurialism and competition within the public school system, are one of the most popular state-level education reform strategies.⁸ Title III of the Clinton Administration proposal included a provision that would authorize some start-up funds for schools chartered by states or local school boards, but the House Committee on Education and Labor amended H.R. 6 to require that charters be granted only by school district boards. This is an important restriction because a number of states, including California, Massachusetts, Michigan, and Minnesota, have found it necessary to allow petitioners denied by district boards the right to appeal to another public authority

8 See Tucker and Lauber, *School Choice Programs: What's Happening in the States*, 1994 edition.

(typically the state education agency). This happens because some district boards are very resistant to reform and see even public charter schools as unwanted competition with their monopoly over public education. Many of the schools currently approved in charter schools states, including those in Massachusetts and Minnesota, would not exist without an appeals provision and would not have qualified for start-up help under the House bill. Another limitation in both the Administration's original proposal and the amended House version excludes private companies as "developers" of charter schools; Massachusetts' recent public charter schools law allows both state charters and private developers. By conditioning the receipt of federal funds on approaches that are narrower than states already are enacting in this area, these limitations would narrow state flexibility unreasonably while discouraging more ambitious—and promising—experimentation.

Policy Recommendation: An expanded and more neutral charter schools program should be included that respects, and is consistent with, states' ongoing experimentation with a variety of approaches. Congress should not try to restrict how states will conduct the charter process.

CONCLUSION

While preventing federal attempts to erode state and local control of education is critical, it is not enough simply to avoid harm when billions of Title I federal dollars are at stake. The assumption that increased federal regulation and funneling taxpayers' money through federal, state, and local education bureaucracies somehow can lead to improvement despite all that has been learned from the recent history of education reform is fundamentally flawed.

Instead of being asked to place more faith in government regulation, American families should be empowered and given the ability to demand a quality education from a variety of educational providers. Both during the campaign and since taking the oath of office, President Bill Clinton repeatedly has called for education reform based on market-oriented mechanisms, be they charter schools or private managers contracting with public school districts; he should refuse to sign any bill that does not move decisively in that direction. At the same time, states need the freedom to develop rigorous standards and high quality assessments that monitor results and motivate improvement; he should veto any bill that undermines these vital freedoms.

After so many years of bureaucratic administration with no measurable improvement, tinkering with the *status quo* is not enough. Instead, the consumers of education should be empowered to demand an education that encourages American students to reach the highest standards they can achieve.

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