

States. Hawaii was 2,000 miles closer to Japan. There was no such internment program, and there should not have been.

So, Mr. President, I believe that a sincere, unequivocal apology by the U.S. Government will not only say what must be said but also will say it properly. Therefore, I do hope that this legislation will not be approved.

#### ELEMENTARY AND SECONDARY EDUCATION IMPROVEMENT ACT

Mr. BYRD. Mr. President, the distinguished Republican leader is on the floor and we do want to move forward with the conference report.

Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 5.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the amendment of the Senate to the bill (H.R. 5) to improve elementary and secondary education, and for other purposes.

(The amendment of the House is printed in the RECORD of April 19, 1988, beginning at page H1717.)

Mr. PELL. Mr. President, I am very pleased that we are considering H.R. 5, the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

It is fitting tribute that this legislation is named after both AUGUSTUS F. HAWKINS, the chairman of the House Education and Labor Committee, and Senator STAFFORD, the former chairman and current ranking minority member of the Senate Subcommittee on Education. It is proof that the Federal investment in elementary and secondary education enjoys solid bipartisan support.

In addition, I am extremely pleased that as part of this legislation we have renamed the GSL Program the Robert T. Stafford Student Loan Program. When we passed the elementary and secondary reauthorization bill on the Senate floor in December, I lamented the fact that our good friend of education would be retiring at the end of this Congress, thus ending the education firm of Pell-Stafford. By naming the principle student loan program after Senator STAFFORD, we have guaranteed that the firm of Stafford and Pell will live on long after we have both retired from this Chamber through both the Pell Grant Program and the Stafford Student Loan Program.

The legislation before us represents strong consensus on both sides of the Capitol, as well as both sides of the aisle. In reaching that consensus, there has been give—and take—on both sides. The final result is a strong bill supporting our twin commitments to equality and quality through Federal financial assistance. We have a solid reauthorization of the critically important chapter 1 program, and a new

concentration grant formula that I hope will ensure that, for the first time since 1981, needed funds will be flowing to areas with high concentrations of chapter 1 children. In addition, we have restructured the chapter 2 block grant so that it can more effectively contribute to educational innovation and reform at the local level.

We have agreed to the Senate's restructuring of the Impact Aid Program, and to major elements of the Senate's changes in the Bilingual Education Act. We have more than doubled the authorization for the Magnet School Program which provides assistance to school districts under a desegregation plan, and have created a new program which will provide grants to racially isolated schools to improve curriculum quality.

We have an important new program to aid the gifted and talented, as well as an expanded Adult Education Act. We continue the Dropout Prevention Program that was authorized last year, and we begin a new and extremely important program of basic skills for secondary school students.

On a more personal note, we have preserved provisions on which I have worked for many years. These include a 10-percent setaside for corrections education under the Adult Education Act, and creation of an optional test for academic excellence.

These are but a few of the more important changes that we have accomplished in fashioning this omnibus legislation. It is legislation of which we can all be proud, and which should most certainly be sent to the President for his signature.

I would like to emphasize that the statement of managers that was part of the conference report would continue to apply to H.R. 5 as part of the legislative history. I would therefore ask that the full text of the statement of managers on the conference report on H.R. 5, as it applies to the education provisions, be inserted in the RECORD with the clear understanding that it would serve as legislative background.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5) to improve elementary and secondary education, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute

agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

#### STATEMENT OF THE MANAGERS

##### TITLE I

##### CHAPTER 1

1. The House bill titles the act the "School Improvement Act of 1987" while the Senate amendment titles it the "Robert T. Stafford Elementary and Secondary Education Improvement Act of 1987".

The House recedes with an amendment naming the Act "The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988", and renaming the guaranteed student loan program the "Robert T. Stafford Student Loan Program".

2. The House bill declares it to be the policy to increase the amount appropriated for Chapter 1 by \$500,000,000 a year over the next six years while the Senate amendment proposes increasing the percentage of children served over the next five years until all eligible children are served.

The Senate recedes with an amendment revising this provision to read: "expand the program authorized by this chapter over the next 5 years by increasing funding for this chapter by at least \$500,000,000 over baseline each fiscal year and thereby increasing the percentage of eligible children served in each fiscal year with the intent of serving all eligible children by fiscal year 1993."

3. The Senate amendment, but not the House bill, provides that AFDC children above the poverty line shall be counted for purposes of distribution of funds for fiscal years 1989, 1990, and 1991 only.

The Senate recedes.  
4. The Senate amendment, but not the House bill, limits determination of children to be counted under AFDC above the poverty line to fiscal years 1989, 1990, and 1991, similar to item 3.

The Senate recedes.  
5. The House bill, but not the Senate amendment, states the criteria of poverty and the form of criteria to be used in counting AFDC children, and neglected and delinquent children.

The Senate recedes.  
6. The Senate amendment, but not the House bill, inserts the phrase "or operated with Federal assistance," regarding schools for Indian children.

The House recedes with an amendment to read as follows: "secondary schools for Indian children operated with Federal assistance or operated by the Department of Interior."

7. The Senate amendment, but not the House bill, designates certain tribal organizations as local educational agencies and the Secretary of the Interior as a State educational agency for purposes of this chapter, and requires the Secretary to comply with certain U.S. codes if he issues regulations.

The House recedes.  
8. The House bill, but not the Senate amendment, provides for a small state minimum of 1/4 of 1 percent from Chapter 1 basic grant funds once appropriations exceed a certain level, and limits the amount of increase any state may receive under this provision to 150% of the amount received for the preceding fiscal year.

The Senate recedes with an amendment that no State may receive more than 150% of the national average per pupil allocation or more than 150% of the amount it received under this part in the previous fiscal year, whichever is less, due to this provision

and that the small State minimum may take effect when appropriations for Part A exceed by at least \$700,000,000 the amount appropriated in fiscal year 1988.

9. The House bill reauthorizes the program beginning October 1, 1987, while the Senate amendment reauthorizes it beginning October 1, 1988.

The House recedes.

10. Concentration Grants:

a. The Senate amendment, but not the House bill, distributes one half of the amount available for concentration grants based on each county's number of Chapter 1 children in excess of 5,000 or 20%, except that each State receives at least one-quarter of one percent of \$250,000 whichever is greater (see note (c), page 20, for second half of the distribution under the Senate amendment).

The Senate recedes.

b. The House bill distributes all its concentration grant funds using one formula: children counted under section 1005(c) in counties in excess of 6500 and all such children in counties in excess of 15%. The House bill also includes a State minimum of one-quarter of one percent.

The Senate recedes with an amendment that each State shall receive 150% of the national average per pupil allocation under this section or a minimum of \$250,000.

c. The Senate amendment, but not the House bill, distributes the second half of funds available under concentration grants on the basis of the regular Chapter 1 formula, and provides for a second small state minimum of ¼ of one percent or \$250,000 whichever is greater, from the second half of funds available under concentration grants.

The Senate recedes.

d. The House bill states that the Secretary shall determine the number of children to be counted for any county while the Senate amendment designates the SEA to perform that function.

The House recedes with an amendment giving the Secretary the responsibility to allocate to the county level and giving the State educational agency the responsibility to allocate within counties.

e. The House bill sets special rules for distribution of concentration funds to States which receive the minimum grant while the Senate amendment sets such rules for States receiving less than 1 percent of the total available for concentration grants.

The Senate recedes.

f. The Senate amendment, but not the House bill, requires that in distributing concentration funds, LEAs under the first two rankings must have received an amount per eligible child equal to that distributed under the regular Chapter 1 formula before funds may be distributed to LEAs in rank order.

The Senate recedes.

g. The Senate amendment, but not the House bill, restricts the number of LEAs which can receive concentration grants under the rank ordering method to no more than the number who would be eligible under the county-wide poverty average distribution methods.

The Senate recedes.

h. The House bill, but not the Senate amendment, allows the States to reserve 2 percent of the concentration moneys to distribute to LEAs which meet the 6500 or 15% requirement but are otherwise ineligible for concentration funds.

The Senate recedes.

i. The House bill reserves the first \$400 million above the 1987 appropriations level for concentration grants while the Senate amendment reserves the first \$400,000,000 above a \$4.3 billion appropriations level for such purposes and provides that when

amounts appropriated for Chapter 1 exceed \$4.7 billion, 10 percent of such amount shall be reserved for concentration grants.

j. The Senate amendment, but not the House bill, exempts funds for Senate part B (Secondary Schools programs) from calculations of the \$4.3 and \$4.7 billion appropriations levels.

The House recedes with an amendment reserving \$400 million for such grants whenever the appropriation for Part A exceeds \$3.9 billion and further reserving 10% of appropriations for Part A for this purpose when such appropriations exceed \$4.3 billion, except that no State may receive less than it received in the previous fiscal year for the basic grant.

k. The Senate amendment, but not the House bill, provides that if amounts are not available to fully fund concentration grants, such grants shall be ratably reduced, and ratably increased if additional amounts are made available in such a year.

The House recedes.

11. The Senate amendment, but not the House bill, specifies "State and local" educational agencies.

The House recedes.

12. The House bill, but not the Senate amendment, requires a local education agency to match the 5% of Chapter 1 money it may use for innovation.

The House recedes.

13. The House bill, but not the Senate amendment, provides for a waiver of the 50 percent matching requirement for innovation projects under certain circumstances.

The House recedes.

14. Local Applications.

The House recedes with an amendment requiring a description of the assessment procedure in the local educational agency application. The conferees intend that the term "describe" shall not be interpreted to mean the submission of extended narrative prose resulting in unnecessary and burdensome paperwork for local educational agencies and State educational agencies. State educational agencies are encouraged to work with representatives of their local educational agencies to develop standard application forms which will reflect the information required in the most concise form possible.

a. The Senate amendment, but not the House bill, modifies "more advanced skills" with the phrase "that all children should master".

The House recedes with an amendment requiring programs to offer instruction so that children will learn advanced skills all children are expected to master.

The conferees intend that the phrase "advanced skills that all children are expected to master" shall mean academic expectations not substantially different from those expected for other students of the same age or at the same grade level.

b. The Senate amendment, but not the House bill, references "consultation with teachers and parents" in development of the application.

The House recedes.

c. The Senate amendment, but not the House bill, includes an assurance regarding coordination of services to students served by more than one special program.

The House recedes.

d. The Senate amendment, but not the House bill, requires that the application contain a description of services including procedures for needs assessment, evaluation, and identifying and modifying programs for schools and students.

The Senate recedes with an amendment deleting repetitive language pertaining to evaluation and moving procedural language to other sections of the chapter.

The conferees intend that local educational agencies may use current Chapter 1 assessment procedures for children who, with or without bilingual assistance in the testing process, can be identified, using testing written in the English language, as educationally deprived children in greatest need of assistance. For children whose lack of English language proficiency precludes valid assessment using such testing, local procedures to screen and select educationally deprived LEP children may be used, e.g. teacher evaluation, language dominance testing, weighting factors, or other indicators of educational deprivation which discriminate on a basis other than just language deficiency.

15. The Senate amendment, but not the House bill, adds the phrase "for compensatory educational services".

The Senate recedes.

16. The House bill, but not the Senate amendment, requires the plan to reference implementation of the effective schools program.

The Senate recedes with an amendment requiring this coordination, if appropriate.

17. The House bill contains a referencing error, incorrectly referencing section (d) rather than section (e) on accountability.

The House recedes.

18. The House bill, but not the Senate amendment, states that funds for school-wide projects may be used to plan and implement effective schools programs.

The Senate recedes.

19. The Senate amendment, but not the House bill, adds paragraphs regarding parental opportunities to participate in the design, operation and evaluation of the Chapter 1 program with special emphasis on parents who lack literacy or English-speaking skills.

The House recedes.

20. The House bill authorizes \$30,000,000 for fiscal year 1988 for capital expenses to help school districts ensure that eligible children enrolled in private schools have equal access to Chapter 1 programs while the Senate amendment authorizes \$50,000,000 for fiscal year 1989 for such purpose. Both bills authorize "such sums" for later years.

The House recedes with an amendment authorizing \$30 million for fiscal year 1988 and \$40 million for fiscal 1989 and "such sums" through 1993.

21. The House bill, but not the Senate amendment, specifies what may be considered personal property in this new program.

The Senate recedes.

22. The Senate amendment, but not the House bill, uses the term "regular" with regard to non-federal funds in the non-supplanting prohibition.

The Senate recedes.

23. The Senate amendment, but not the House bill, contains a section requiring local educational agencies to use special State or local program funds in the aggregate in Chapter 1 eligible schools to the extent they would have without Chapter 1 funds being available prior to using Chapter 1 funds in such schools. (See note 24, page 60, for special implementation time table.)

The Senate recedes.

24. The Senate amendment, but not the House bill, delays the applicability of the special supplement—not supplant provision described in note 23 for 2 years in states which currently have special programs which operate under current ECIA supplement—not supplant provisions.

The Senate recedes.

25. The House bill, but not the Senate amendment, requires the State to withhold funds from LEAs which are not in compli-

ance with comparability requirements, but only to the extent they are out of compliance.

The Senate recedes.

26. The House bill applies the exclusion of special state and local funds to both comparability and supplement/supplant requirements while the Senate amendment makes it applicable only to comparability.

The Senate recedes.

27. The House bill, but not the Senate amendment, mentions "children with specific learning disabilities" in addition to handicapped children.

The House recedes.

28. The Senate amendment, but not the House bill, adds "and related services" to special education as excludable costs for supplement, not supplant, purposes.

The Senate recedes.

Section 1019. Evaluations. The conferees intend that national evaluation standards shall be implemented as quickly as possible by State and local educational agencies, and that such agencies which are already using the Title I evaluation and reporting system as their formal evaluation tool or a system which allows national aggregation of data according to such standards shall consider the 1988-1989 school year as the first year of implementation of evaluation requirements pursuant to this section.

The conferees further intend that States which are currently conducting State evaluations on a three-year cycle where one-third of the local educational agencies report each year may continue to use that evaluation procedure.

In addition, conferees intend that local educational agencies may use a sampling procedure or carefully designed study to meet the sustained gains requirement rather than trying to track all children served at all grade levels in all subject areas for a period of three years. The conferees recognize that sampling and study procedures are cost and time efficient while still providing the local educational agency with necessary and valuable information about the effectiveness of their programs.

29. The Senate amendment, but not the House bill, requires LEAs to evaluate annually the effectiveness of parental involvement.

The House recedes with amendment changing "evaluate" to "assess".

The House recedes with an amendment regarding data collection. "(3) collect data on the number of children with handicapping conditions, the race, age, and gender of children . . ." The conferees intend that the report shall simply state the total number of children with handicapping conditions who are served in the Chapter 1 program, not the number broken out by grade level, race, age, gender, and subject area, or by handicapping condition in each of those categories.

30. State Application. The Senate amendment, but not the House bill, requires States to submit an application to the Secretary of Education in order to receive funds under this chapter.

The Senate recedes with an amendment requiring the State to develop, in consultation with a committee of practitioners, a program improvement plan which shall be disseminated to school districts and available at the State level for inspection.

a. The Senate amendment, but not the House bill, requires that the State application describe the criteria and procedures the State will use to assess educational effectiveness of local and State programs.

The Senate recedes.

b. The Senate amendment, but not the House bill, requires that the State application describe the criteria, policy and proce-

dures it will use to take corrective measures to improve LEAs with inadequate educational achievement.

The Senate recedes.

c. The Senate amendment, but not the House bill, requires that the State demonstrates that the measures it proposes to use are valid and reliable.

The Senate recedes.

d. The Senate amendment, but not the House bill, allows the Secretary to require specific data collection and uniform evaluation procedures to allow information to be aggregated and compared among states.

The Senate recedes.

e. The Senate amendment, but not the House bill, requires the State to explain in its application any differences in the criteria used by the State and by any local educational agency for assessing program effectiveness.

The Senate recedes.

31. The House bill uses the term "no" improvement while the Senate amendment uses the term "inadequate" improvement to describe the condition which activates LEA program improvement efforts.

The House recedes with amendments tying the measurement of program effectiveness to the desired outcomes stated in the local educational agency's application and adding "lack of substantial progress" toward meeting outcomes as a trigger for program improvement plans.

The conferees intend that the concept of "improvement" shall mean improvement beyond what a student of a particular age or grade level who is receiving services funded under this part would be expected to make during the period being measured if the child received no additional help. This interpretation embodies the congressional purpose that providing Chapter 1 services, in addition to regular education services provided by the local educational agency, to children served by programs under this part who are achieving below the level that is appropriate for children of their age, should result in such students' progression at a faster rate than students who receive no extra help. Use of the term "improvement" rather than "achievement" is a purposeful substitution to indicate congressional intent that measures and standards used to demonstrate progress toward desired outcomes maybe something other than nationally normed standardized test scores.

32. The Senate amendment, but not the House bill, states that a school improvement plan must include a description of educational strategies and resources.

The House recedes.

The conferees intend that State and local educational agencies shall have adequate time to plan carefully and thoughtfully for program improvement, that a "time certain" by which program improvement plans must be in place will be established through the review/modified negotiated rulemaking process, and that State and local educational agencies may set parameters within that time frame. The conferees further intend that State and local educational agencies shall have no more than, but at least, one full school year during which the plan is in effect before judging its effectiveness in raising aggregate student performance.

33. The Senate amendment, but not the House bill, requires that the SEA take appropriate corrective action against LEAs which fail to carry out program requirements, including failure to provide effective compensatory education services.

The House recedes with an amendment changing the title of the section to "Further Action", outlining the joint steps that State and local educational agencies shall take to ensure that program improvement efforts

are successful, and adding a new section (f) requiring mutual approval of program improvement plans prior to their implementation.

The conferees intend that there shall be continued State oversight until the school building Chapter 1 program improves. The conferees emphasize that they intend the State role to be one of facilitating local efforts in whatever manner is cooperatively agreed will be most effective in implementing effective local services to eligible children. Such facilitation may be through direct assistance by State staff or through helping local educational agencies obtain technical assistance from other sources.

The conferees further intend that a school building which is implementing a program improvement plan shall, each year until performance improves, use the same measurement instrument and standards to determine whether performance has improved that it used to measure performance in the year that lack of substantial progress, no improvement or a decline in performance was first demonstrated pursuant to the requirements of this chapter. An exception to this procedure would be made if the measurement instrument or process itself was found to be the problem.

34. a. The Senate amendment, but not the House bill, contains a section requiring the SEA to have and implement an educational improvement plan in any year it receives additional state administrative money under section 1404(b) for such purposes.

The House recedes with an amendment moving the State plan requirement to section 1020 and removing the requirement that it be submitted to the Secretary.

b. The Senate amendment, but not the House bill, requires the State to develop an educational improvement plan, in consultation with LEAs, which plan includes objective measures and assessment standards or procedures for developing them.

The House recedes with an amendment moving the requirement to section 1020.

c. The Senate amendment, but not the House bill, requires the improvement plan to describe the way in which the States will determine which schools are most in need of improvement and how it will assist them.

The House recedes with an amendment removing the reference to schools in greatest need of assistance and adding a requirement that timelines for implementation of program improvement plans be decided by the State and local educational agencies.

d. The Senate amendment, but not the House bill, requires the State to describe the technical assistance it will offer to schools in need of improvement.

The Senate recedes.

e. The Senate amendment, but not the House bill, requires the State to describe how it will develop joint plans with LEAs for schools in need of improvement.

The House recedes with an amendment removing the reference to schools in greatest need of assistance and moving the requirement to section 1020.

f. The Senate amendment, but not the House bill, requires the State to provide program improvement assistance to LEAs with schools in greatest need of improvement in the second fiscal year and thereafter that the SEA receive additional state administrative money under section 1404(b).

The House recedes with an amendment removing the reference to schools in greatest need of assistance and moving the requirement to section 1020.

#### EVEN START

35. The House bill, but not the Senate amendment, contains the Even Start pro-

gram as part B of Chapter 1. The Senate amendment contains Even Start in part A of Title II.

The Senate recedes.

a. The House bill establishes Even Start as a State grant program with a small State minimum of  $\frac{1}{2}$  of 1 percent and a maximum of 5% of the first \$50,000,000 while the Senate amendment establishes it as a discretionary grant program under the Department of Education with grants made directly to local education agencies.

The Senate recedes with an amendment stating that (a) whenever appropriations for this part are less than \$50 million, then the Secretary is authorized in accordance with the requirements of this part to make grants to LEA's or consortia of such agencies to carry out Even Start programs; (b) whenever appropriations equal or exceed \$50,000,000 then grants shall be made to each State in the same proportion as grants allocated under section 1005; and (c) under subsection (b) no State shall receive less than \$250,000 or one half of one percent, whichever is greater, except that no State shall receive an allocation equaling more than 150 percent of the national average per pupil allocation from funds authorized under this part and further no State allocation under subsection (b) shall increase by more than 50 percent over the preceding fiscal year; however, \$250,000 shall be the absolute minimum.

b. The House bill, but not the Senate amendment, has a reservation of 3% of such money for migrant programs to be conducted through the Office of Migrant Education.

The Senate recedes.

c. The Senate amendment, but not the House bill, requires collaboration with other agencies and organizations.

The House recedes with an amendment requiring that such coordination shall be performed where appropriate.

d. The Senate amendment, but not the House bill, specifies that such funds shall be used to pay the Federal share of the cost of the program under this part.

The House recedes.

e. The Senate amendment, but not the House bill, permits payment for child care only for the period the parents are involved in the Even Start program.

The House recedes.

f. The Senate amendment, but not the House bill, permits payment for transportation only for the purpose of allowing the parent or child to participate in the Even Start program.

The House recedes.

g. The Senate amendment, but not the House bill, adds Chapter 2 of this Act and the Education of the Handicapped Act as programs with which Even Start shall be coordinated.

The House recedes with an amendment limiting coordination to any relevant programs under the Chapter 2 program.

h. The House bill provides that funds under this part may be used to pay 80, then 60, then 40, then 20 percent of the cost of Even Start programs in the first, second, third, fourth and subsequent years while the Senate amendment specifies such shares as 90, 80, 70, and 60 percent for those years.

The House recedes.

i. The House bill, but not the Senate amendment, prohibits using such funds for indirect costs of the program.

The Senate recedes.

j. The House bill provides that matching funds may come from Federal, State or local sources while the Senate amendment requires that they be from a non-Federal source.

The House recedes with an amendment requiring the remaining cost to be obtained from any source other than funds made available for programs under this title.

k. The House bill limits eligible parent participants to persons eligible under the Adult Education Act while the Senate amendment makes such provisions permissive.

The Senate recedes.

l. The House bill requires that the application for funds be submitted to the State education agency while the Senate amendment requires submission to the Secretary of Education.

The Senate recedes with an amendment that applications will be submitted to the Secretary under Section 1052(a) and to the SEA under Section 1052(b).

m. The Senate amendment, but not the House bill, requires that the application for funds include a description of collaborative efforts with other agencies or organizations.

The House recedes with an amendment requiring such coordination to be done, if appropriate.

n. The Senate amendment, but not the House bill, includes Chapter 2 of this act as a program with which Even Start programs will be coordinated.

The House recedes with an amendment requiring such coordination to be done where appropriate.

o. The House bill requires appointment of a review panel by the State education agency to select applications which will be funded while the Senate amendment gives the Secretary the responsibility of selecting programs.

The Senate recedes with an amendment reflecting the national or State-administered nature of the program and specifying that the review panels at both national and State levels will recommend programs.

p. The House bill lists seven criteria for application approval which include greater need for such services, submission of reasonable budgets, and representation of urban and rural areas of the State (not in the Senate amendment) while the Senate amendment has five criteria including serving the greatest percentage of eligible children and parents.

The Senate recedes with an amendment specifying that proposals which will serve the greatest percentage of eligible children and parents shall receive special consideration.

q. The House bill, but not the Senate amendment, specifies the required composition of the review panel.

The Senate recedes with an amendment making the review panel operative for both the national demonstration and State grants programs and specifying required panel members.

r. The Senate amendment, but not the House bill, requires the Secretary to assure equitable distribution of grants between States and among urban and rural areas of the United States.

The House recedes with an amendment combining Senate provisions for national grants with House provisions for State grants.

s. The Senate amendment, but not the House bill, allows the Secretary to discontinue funding to projects that do not make sufficient progress toward meeting their objectives.

The House recedes with an amendment regarding State grant programs and ensuring transition of funding for grants from the Secretary when it becomes a State grant program. The House recedes with an amendment regarding funding based on progress toward objectives to apply to both national and State grant programs.

(s)(1) The House recedes.

t. The House bill, but not the Senate amendment, specifies that program evaluations shall not be done by persons involved in the administration of the program and shall include control groups where possible.

The Senate recedes.

u. The House bill requires an annual evaluation while the Senate amendment requires an evaluation to be submitted to Congress in 1992.

The Senate recedes with an amendment requiring one report for Congress in 1993, removing the requirement for submission to the National Diffusion Network "in the form required", and moving the requirement to Title VI of the Act.

v. The House bill authorizes \$50,000,000 for this part for 1988 and such sums thereafter, while the Senate amendment authorizes \$25,000,000 for 1989 and increases of 1 million, then \$3 million for each succeeding year.

The Senate recedes with an amendment authorizing \$50 million for fiscal year 1989 and such sums thereafter.

#### SECONDARY SCHOOL PROGRAMS

36. Secondary School Programs—The House bill authorizes in Chapter 1 both a 3-year discretionary grant program for school dropout prevention and basic skills improvement and a state grant program beginning in 1991, while the Senate amendment authorizes only a state grant program in Chapter 1 beginning in 1990, and includes the demonstration program in Title VII of the Senate amendment. The Senate amendment separates the drop-out and basic skills demonstration programs making line-by-line comparisons with the House bill very difficult. Appropriate portions of Title VIII, however, have been moved to this section for comparison purposes and are labeled. The entire text of Title VIII has then been included, following the House bill, as Part B on dropout prevention and basic skills improvement.

The House recedes, leaving the demonstration dropout prevention and secondary schools basic skills improvement programs outside Chapter 1 and agreeing to the Senate form of program requirements, etc. divided under the national demonstration and State grant program, with an amendment authorizing the national demonstration program for two years.

a. The House bill authorizes \$100 million for fiscal year 1988 for both dropout prevention and basic skills demonstration programs and such sums thereafter while the Senate amendment authorizes \$50,000,000 for FY 1988 and 89 for dropout programs and \$200,000,000 for basic skills improvement programs, and then \$400 million for FY 1990 and adds \$50 million for each Fiscal Year thereafter for the State program.

The House recedes to a \$50 million level for the dropout portion and \$200 million funding for basic skills portion for 1988 and 1989, and for the combined State grant program \$400 million for FY 1990, \$450 million for FY 1991, \$500 million for FY 1992, and \$550 million FY 1993.

b. The House bill, but not the Senate amendment, provides a \$3 million reservation for migrant programs from national demonstration funds.

The House recedes regarding the national demonstration program and the Senate recedes regarding the State program reservation of funds for migrant programs.

c. The House bill, but not the Senate amendment, reserves 50 percent of the funds for national demonstration programs

for dropout prevention programs and 50 percent for basic skills improvement.

The House recedes to the 50/50 spending split between dropout funds and basic skills funds in State grant programs.

d. The House bill, but not the Senate amendment, allows for adjustment of percentages at the Secretary's discretion.

The House recedes.

e. The House bill provides that categories for allocating demonstration program funds shall be: 250,000 or more students—20%, 50,000 to 250,000 students—25%, 20,000 to 50,000 students—30% of the funds; while the Senate amendment categories are 50,000 and more students—45%, 20,000 to 50,000 students—15%, and less than 20,000 students—35% of the amount appropriated.

The House recedes with an amendment regarding categories for demonstration programs: 1st tier enrollment, 100,000+, 225 percent; 2nd tier enrollment, 20,000 to 100,000, 40 percent; 3rd tier enrollment, 0 to 20,000, 30 percent; Community-based organizations, 5 percent.

f. The Senate amendment, but not the House bill, contains a 5% setaside for community-based organizations.

The House recedes.

g. The Senate amendment, but not the House bill, provides that 25% of the funds available for each category shall be allotted to educational partnership. (See note 36 FP, re authorized activities.)

The House recedes with an amendment consolidating two paragraphs.

h. The Senate amendment, but not the House bill, requires use of a peer review process if the Secretary intends to transfer funds among categories.

The House recedes.

i. The Senate amendment, but not the House bill, requires use of a peer review process if the Secretary intends to make funds not needed for educational partnership available to LEAs in the same categories.

The House recedes.

j. The House bill, but not Senate amendment, requires that the Secretary give first priority in each category to applicants with very high numbers or percentages of school dropouts.

The Senate recedes with an amendment providing that the Secretary shall give priority to applications which both reflect high numbers or percentages of school dropouts and show replication of successful programs.

The conferees intend—contrary to the Secretary's notice inviting new applications published March 14, 1988, in the Federal Register—that the Secretary shall give priority to applications that have both (1) high numbers or percentages of dropouts and (2) replicate or expand successful programs, not one or the other. Conferees further expect the Secretary will revise the published priorities to reflect this congressional intent.

k. The House bill, but not the Senate amendment, provides that grant awards shall be proportionate to the extent of the severity of the dropout problem.

The Senate recedes.

l. The House bill provides that LEAs fund 25% of the second year grant and 40% of all following years from other Federal, State, or local sources, while the Senate amendment provides that 30% of the cost for the second and ensuing years shall be funded from other sources, but not more than 10% from other Federal monies.

The House recedes with an amendment reducing the Federal share gradually from 90%, to 75%.

m. The House bill, but not the Senate amendment, requires the Secretary to con-

sider quality of the applicant's proposal and provide for equitable distribution of grants on the basis of urban and rural areas, size of districts, and student characteristics.

The House recedes.

n. The House bill, but not the Senate amendment, provides that the Secretary may fund additional projects in the second or third year of the demonstration program if additional funds become available.

The House recedes.

o. The House bill, but not the Senate amendment, requires the Secretary to conduct an evaluation of programs under this part.

The Senate recedes with an amendment requiring the Secretary to take into account data collected from the national school dropout study and moving the requirement to Title VI of the Act.

p. The Senate amendment, but not the House bill, provides for a small State minimum of one-half of one percent of the amount appropriated under the state grant program which begins under the Senate amendment in 1990.

The House recedes with an amendment that there will be a small State minimum of \$250,000 or 0.25%, whichever is greater, with provisions that no State shall receive an amount which is greater than 150% of the national average amount per child allocated from funds authorized under this subpart, solely as a result of implementation of this provision but \$250,000 remains the floor.

q. The House bill, but not the Senate amendment, requires that grants to LEAs under the State grant program be made to those LEAs having the greatest financial need for funds.

The House recedes with an amendment referencing priority.

r. The Senate amendment, but not the House bill, provides that grants shall be awarded to programs offering innovative approaches or having promise or replication and dissemination.

The House recedes.

s. The House bill, but not the Senate amendment, states that duration of grants shall not exceed three years.

The House recedes with an amendment providing a one-year grant period.

t. The Senate amendment, but not the House bill, includes an extensive section on local and State evaluation and program improvement.

The Senate recedes.

u. The House bill, but not the Senate amendment, requires that the application contain procedures for annually evaluating the project and determining its cost effectiveness.

The Senate recedes with an amendment applying requirements for evaluation and program improvement to this program.

v. The House bill, but not the Senate amendment, requires that applications from LEAs for dropout prevention programs under the State grant program be developed in consultation with community-based organizations.

The Senate recedes with an amendment making cooperation with CBOs permissive.

w. The House bill, but not the Senate amendment, requires that dropout prevention program applications address the specific needs of Indians, migrants, and other high risk populations.

The House recedes.

x. The House bill, but not the Senate amendment, requires that LEAs establish advisory councils for dropout programs.

The House recedes.

y. The House bill, but not the Senate amendment, lists thirteen authorized activities under the State grant program.

The House recedes with an amendment combining Senate/House fund uses.

z. The Senate amendment, but not the House bill, contains two provisions for coordinating dropout activities among agencies and under various acts.

The House recedes with an amendment combining Senate/House fund uses.

AA. The Senate amendment, but not the House bill, under basic skills improvement allows funds to be used for innovative community-based programs and for eligible students outside the school.

The House recedes.

BB. The Senate amendment, but not the House bill, requires that under the State grant program no more than 50 percent of the funds may be used for dropout prevention and re-entry activities.

The House recedes.

CC. The House bill, but not the Senate amendment, limits to 10 percent of a grant the amount that may be used for local administrative costs.

The Senate recedes with an amendment limiting administrative cost to 5 percent.

DD. The House bill, but not the Senate amendment, requires LEAs receiving grants under this part to cooperate with the NDN.

The Senate recedes.

EE. The House bill, but not the Senate amendment, requires the Secretary to consult with State and local agencies and the GAO in developing application and evaluation requirements for this part.

The House recedes.

FF. The Senate amendment, but not the House bill, describes particular activities for educational partnerships.

The House recedes.

GG. The Senate amendment, but not the House bill, requires that not less than 30 percent of national demonstration dropout be used for dropout prevention and another 30 percent be used for re-entry activities.

The House recedes.

HH. The Senate amendment, but not the House bill, authorizes \$500,000 for a national school dropout study and specifies 10 components of the study.

The Senate recedes.

II. The Senate amendment, but not the House bill, requires that the Secretary establish a standard definition of "school dropout" within 60 days of enactment of this Act.

The House recedes with an amendment that requires the Secretary, in consultation with particular groups, to issue a definition of a school dropout within 60 days of enactment of this Act.

The conferees intend that a definition of school dropout shall in no way interfere with the right of parents to educate their children at home pursuant to each State's regulation of home schooling nor shall such definition interfere with each State's minimum age attendance requirements.

In developing the definition of "school dropout", the Secretary shall consult with State educational agencies, local educational agencies, teacher organizations, boards of education, administrator's organization, and any other pertinent groups or organizations.

#### MIGRANT PROGRAM

37. The Senate amendment, but not the House bill, specifies that migratory agricultural dairy workers are a migrant category.

The House recedes.

38. The Senate amendment, but not the House bill, adds EHA to the list of Acts with which migrant programs must be coordinated.

The House recedes.

39. The Senate amendment, but not the House bill, authorizes the Secretary to enter

into contracts with SEAs for activities to improve coordination.

The House recedes.

39(a) The Senate recedes with an amendment inserting "approved under P.L. 94-142" after "programs".

40. The House bill, but not the Senate amendment, includes a requirement that the Secretary award the migrant students' records contract to the SEA which had it the previous year, unless a majority of the States object in writing.

The Senate recedes with an amendment stating that the current recipient of the contract for the Migrant Student Records Transfer System shall continue to receive the contract until 1992, barring complaints from a majority of states, but as of July 1, 1992, and every four years thereafter, the Secretary shall conduct a competition to award the contract.

#### HANDICAPPED PROGRAM

The conferees agree that infants and toddlers with handicaps shall receive early intervention services consistent with the requirements and conditions of Part H of the EHA, and therefore, the phrase "who by reason of their handicapping condition require special education and related services" in the definition of handicapped children does not apply to infants and toddlers with handicaps.

41. The Senate amendment, but not the House bill, adds the phrase "for programs for handicapped children."

The House recedes with an amendment which clarifies for which programs and children these funds can be expended.

42. The Senate amendment, but not the House bill, includes a definition of "children" and of "handicapped children" in the State program for the handicapped.

The House recedes with an amendment which would clarify which "infants and toddlers" are covered (e.g. as defined in Part H of the EHA) and would add to the definition of handicapped children—"who by reason of their handicap require special education and related services".

43. The House bill and the Senate amendment include assurances regarding compliance with EHA and monitoring such compliance in the State handicapped program, but the House bill states such requirements in assurances (1) and (2) in less detail than the Senate amendment which states such requirements as assurances (2) and (3).

The House recedes.

44. The Senate amendment throughout this part makes reference to handicapped children, infants, and toddlers while the House bill refers to handicapped children or infants.

The House recedes.

45. The Senate amendment contains language in lines 1-4 of assurance (3) that appear in the House bill as the second sentence of Section 1222(a).

The House recedes.

46. The Senate amendment, but not the House bill, contains an assurance providing that payments received by SEAs under this part shall be used for projects for handicapped children. However, identical language appears in the House bill as Section 1223, Program Requirements.

The Senate recedes.

47. The House bill states that the Secretary "shall" report annually while the Senate amendment uses the term "will."

The Senate recedes.

48. The Senate amendment, but not the House bill, requires that States include the place of residence for participating children in their annual report to the Secretary.

The Senate recedes.

The conferees direct the General Accounting Office, as part of the Study of State Operated Programs, to collect information from a sample of States on the types of residences in which participating children are found. Suggested categories for classifying types of residences include, but need not be limited to: children living in a family home attending educational programs housed in a residential facility; children living in a residential facility (not a single family home) attending an educational program in a regular school administered by an LEA; children living in a residential facility and attending an educational program in that facility and children living in a family home attending an educational program in a regular school administered by an LEA. Using the same sample, the conferees also direct GAO to collect information on where children, participating in Chapter 1 programs for children with handicaps, reside. Such information shall include the following: the number of children living in their own home; the number of children living in foster homes; the number of children living in public facilities housing: (a) 1 to 5 children, (b) 6 to 15 children, and (c) 16 or more children; the number of children living in private facilities housing: (a) 1 to 5 children, (b) 6 to 15 children, (c) 16 or more children.

The sample (pertaining to (a) type of residence and educational placement and (b) type of residence and number of occupants in a residence) drawn from each sample State should be of sufficient size to infer what proportion of the total participating population within a State various categorizations represent.

49. The House bill, but not the Senate amendment, requires the SEA to establish policies and procedures for transferring children from State operated programs to LEA programs.

The House recedes.

The conferees anticipate that in the future Chapter 1 handicapped program funds will be used to an increasing degree to foster new and expanded opportunities for children with handicaps to participate with their nonhandicapped peers in a wide variety of educational settings and experiences, thus reinforcing the least restrictive environment provision in Part B of the Education of the Handicapped Act.

50. The Senate amendment, but not the House bill, specifies that in determining grant amounts, handicapped children aged from birth through 21 must be used in the computation.

The House recedes.

51. The Senate amendment, but not the House bill, includes the phrase "directly responsible for providing free public education for handicapped children" and "is directly responsible for providing" early intervention services to designate appropriate State agencies.

The House recedes with an amendment clarifying that State programs include those under contract or other arrangement with such State agency.

The conferees intend that the phrase "directly responsible under contract or other arrangement" not be interpreted as limited to direct service personnel employed by the State. The conferees also intend that this phrase would allow funds appropriated by a State specifically to provide service to these children to be a reflection of direct responsibility. Moreover, the conferees intend that nothing in this provision be construed as altering the eligibility status of any agency or program now participating in the Chapter 1 Handicapped Program.

52. The Senate amendment, but not the House bill, refers to the "commonwealth of Puerto Rico." In determining funds to be re-

ceived by Puerto Rico under this part, the Senate amendment, but not the House bill, requires compliance with section 619 of the EHA in order to count children aged 3-5 inclusive, after 1991.

The House recedes.

53. The Senate amendment, but not the House bill, states that for purposes of counting children transferring from a State to a local program, the child must continue to receive a free and appropriate public education. The House bill requires an appropriately designed educational program.

The House recedes.

54. The Senate amendment, but not the House bill, restricts the SEA to counting handicapped children aged three to five inclusive beginning in 1991 only if a State is eligible for a grant under Section 619 of EHA.

The House recedes.

55. The Senate amendment contains this language as assurance (1) and part of assurance (3) under section 1221(b).

The Senate recedes.

56. The House bill, but not the Senate amendment, has a provision requiring funds under this subpart to supplement the provision of special education services, and prohibits such funds from being used for services funded by State or local funds during the previous fiscal year.

The House recedes.

The conferees wish to emphasize that these funds shall not be used to supplant State and local funds as delineated in section 1018(b) and that each State shall maintain a level of fiscal effort consistent with the requirements in section 1018(a).

57. The House bill, but not the Senate amendment, requires recipients of funds under this subpart, to demonstrate that children receive a benefit from their use.

The Senate recedes.

58. The House bill, but not the Senate amendment, allows a letter of request in lieu of application if the LEA intends to use such moneys received under this subpart for a single purpose or to serve fewer than five children. The Senate amendment allows such a letter only if the agency intends to serve fewer than five children with the funds received.

The Senate recedes.

The conferees intend that a local or State educational agency applying to use funds for a single purpose shall include with the letter of application an assurance that the funds shall be used to benefit only children eligible under this subpart.

59. The Senate amendment, but not the House bill, delineates uses of funds in section 1223 under the heading GENERAL RULE and includes "services" as well as programs and projects in this descriptive section.

The Senate recedes with an amendment which would number the House "uses of funds" provision.

60. The Senate amendment, but not the House bill, specifies that funds may be used for other specialized equipment, as well as assistive devices.

The House recedes.

61. The Senate amendment, but not the House bill, includes assessment of children as an allowable use of funds, and further specifies that evaluation of and dissemination of information about programs funded under this part be included in this same list.

The Senate recedes on "assessment of children". The House recedes and accepts the Senate provision which allows funds to be used for planning, evaluation and dissemination of information.

62. The Senate amendment, specifically prohibits use of these funds for construc-

tion of facilities while the House bill in the parenthetical in section 122(a) eliminates the reference to construction of school facilities contained in current law.

The House recedes.

63. The Senate amendment uses the heading Services and Program Application for section 1222 while the House bill uses the heading Application. The Senate amendment inserts the word "each" before "such application" in this subsection.

The House recedes.

64. The Senate amendment, but not the House bill references the written description of programs required in the application for funds.

The House recedes.

The sentence—"Any State educational agency operating programs or projects under this subpart shall prepare a written description of such programs and projects in accordance with subsection (b) and (c)."—is included to clarify the situation when an SEA must "write" an application to itself for these funds.

65. The Senate amendment uses the heading Application Assurances while the House bill uses the heading Assurances.

The House recedes.

66. The Senate amendment specifies that all handicapped children served under this part receive a free, appropriate public education, and that their parents have all the rights and procedural safeguards provided under EHA while the House bill references compliance with EHA more generally.

The House recedes.

67. The Senate amendment, but not the House bill, specifies that in order to receive funds under this subpart an agency must maintain fiscal effort.

The House recedes.

68. The Senate amendment, but not the House bill, provides that parents of children to be served shall have an opportunity to participate in developing the project application.

The House recedes.

69. The House bill provides that applications specify ages and handicapped conditions of children to be served, while the Senate amendment specifies that all applications must include number of children for each disability and age category described in EHA.

The House recedes.

70. The Senate amendment uses the term "directly responsible" while the House bill uses the term "legally" responsible in reference to the provision of special education.

The House recedes with an amendment which would insert "under contract or other arrangement with the State educational agency" after "directly responsible" (note: This is related to #51).

71. The Senate amendment, but not the House bill, includes the phrase "early intervention services".

The House recedes.

72. The Senate amendment, but not the House bill, includes the parenthetical phrase "(including schools and programs operated under contract or other arrangement with a State agency.)".

The House recedes.

73. The Senate amendment, but not the House bill, requires that programs authorized by this subpart shall be monitored by the Secretary whenever EHA is monitored.

The House recedes.

74. The House bill requires that a GAO study examine the relationship of programs operated under this subpart to programs under Part B and Part H of EHA generally while the Senate amendment under section 1463(b)(5) specifies particular relationships and comparisons.

The House recedes.

75. The House bill, but not the Senate amendment, limits the GAO study to an examination of the relationship between state operated programs for handicapped children under Chapter 1 and parts B and H of the EHA.

The House recedes with an amendment changing January 30, 1989 to February 28, 1989, and moving the requirement to Title VI of the Act.

76. The Senate amendment, but not the House bill, defines children as including infants and toddlers for purposes of this section.

The House recedes.

77. The Senate amendment, but not the House bill, outlines six components to be included in the GAO study.

The House recedes.

The conferees intend that GAO, for each State included in its study, collect and describe any policies, procedures, and/or descriptions of State practice related to transferring children, who are participating in the Chapter 1 program for children with handicaps, into LEAs (pertains to children described in section 1224(1)(B)(ii)).

The Senate amendment, but not the House bill, requires the Comptroller General to include in the study report a State by State analysis, including recommendations for legislation, if appropriate.

The House recedes.

#### NEGLECTED AND DELINQUENT

79. The Senate amendment, but not the House bill, directs the State to evaluate the ability of neglected or delinquent students to transfer to special education programs, where appropriate.

The House recedes.

The conferees intend that the phrase "a State which is responsible for providing free public education for children in institutions for neglected and delinquent children" shall be interpreted in the same manner as section 1224(1)(A) with regard to institutions for handicapped children. Funds appropriated by the State specifically to provide education for children in institutions for neglected and delinquent children shall be considered adequate proof of the State's responsibility for the free public education of such children even though the actual provision of services may be by another agency which receives the State funds from the State educational agency.

80. The Senate amendment, but not the House bill, includes a reference to Chapter 1 of ECIA of 1981.

The House recedes.

81. The House bill references section 1052 or 1131; while the Senate amendment references section 110 in regard to the amounts an LEA is eligible to receive.

The Senate recedes.

82. The House bill provides a minimum of \$300,000 for state administration, while the Senate amendment provides a \$325,000 minimum state administration grant.

The House recedes.

83. The Senate amendment, but not the House bill, provides that when appropriations for this chapter equal or exceed \$4.8 billion, each state may receive an additional .5 percent of the amount allocated to that State for education improvement program costs. The third fiscal year such amount is 1%.

The House recedes with an amendment creating a new subsection 1405 which provides to each State educational agency an amount equal to 0.25 percent of the amount allocated to each State under Parts A and D for 1989, 1990, and 1991 and 0.50 percent of such amount for 1992 and 1993 to be used for program improvement activities.

The managers intend that direct educational services includes technical assistance as agreed to jointly by the LEA and SEA under section 1405(b)(3) and may include purchase of additional institutional materials and resources.

84. The Senate amendment, but not the House bill, provides \$160,000 or \$25,000 to Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands for educational improvement. The third fiscal year amounts increase to \$325,000 or \$50,000.

The House recedes with an amendment making \$90,000 for small States and \$15,000 for the island territories available for 1989, 1990, and 1991; and \$180,000 or \$30,000 available for 1992 and 1993 for program improvement activities.

85. The House bill requires that the Secretary shall consult with a review panel in promulgating regulations for this chapter while the Senate amendment requires the Secretary to use negotiated rule making to promulgate regulations.

The House recedes with an amendment combining the regional review and negotiated rule-making processes.

The conferees intend that the development of Federal regulations for Chapter 1 should be a three-step process. The Department of Education will hold, first, a series of regional meetings to identify regulatory issues of concern to school administrators, teachers, parents, scholars and Chapter 1 advocates; second, a modified negotiated rulemaking demonstrate on several key issues; and third, the normal Federal regulatory review and comment process. The goal of steps one and two is to help the regulation writers understand how new activities are likely to impact persons at the implementation level and to help Chapter 1 administrators, teachers, parents and advocates understand how the Department of Education interprets the law.

The modified negotiated rulemaking process is meant to be a demonstration, and this to be more flexible than the process as operated by other Federal agencies. Specifically the provisions of the Federal Advisory Committee Act are waived to shorten the time and procedures necessary to begin the demonstration. The conferees will look with interest at the regulatory process to see if discussions of program regulations among educators, parents, advocates and Department of Education staff will produce regulations that are more clearly understood and widely supported by practitioners than some prior regulations.

The conferees stress, however, that the demonstration is not meant to lengthen the time for issuance of regulations. Final regulations for this program should be issued within 240 days after enactment.

86. The House bill limits carry-over funds to 25% of the amount appropriated for FY 88 and 15% for FY 89 and each subsequent year, while the Senate amendment makes such limits applicable first in FY 89 and then FY 90.

The House recedes.

87. The House bill, but not the Senate amendment, requires the Secretary to contact with the organization or agency conducting NAEP to carry out the national Longitudinal Study.

The House recedes with an amendment deleting pregnancy rates, completion of postsecondary education, and incidence of suicide as factors which might be influenced by participation in Chapter 1 programs.

88. The House bill, but not the Senate amendment requires the Secretary to respond within 90 days to written requests

from States or LEAs regarding questions under this chapter.

The Senate recedes with an amendment regarding return receipt.

Conferees intend that the term "written guidance" shall have the same meaning in this section as it has under Section 453 of the General Education Provisions Act as amended. Written requests which conform to the requirements of Section 453(b)(2)(B) and (b)(4) of such Act shall qualify as a mitigating circumstance in an enforcement action initiated under Part E, Sec. 453 of such Act.

The conferees further intend that this provision shall encourage, not inhibit, the provision of guidance from the Department of Education to State and local educational agencies.

89. The House bill, but not the Senate amendment, includes a section on Federal research and innovation which requires the Secretary to give priority to research on tutoring programs for children eligible under this chapter to be carried out by States in institutions of higher education and to do research on problems of rural school districts. The Senate amendment contains a separate rural education initiative under Title III of its amendment.

The Senate recedes with an amendment to include the study as part of the Chapter 1 longitudinal study.

90. The House bill authorizes \$12 million for technical assistance and the National Longitudinal Study for FY 88 and such sums thereafter, while the Senate amendment authorizes \$8 million for evaluation and technical assistance for FY 89 and an additional \$400,000 for each fiscal year thereafter.

The House recedes with an amendment authorizing \$4 for technical assistance and evaluation and \$4 million for the national longitudinal study.

91. The Senate amendment, but not the House bill, requests the Secretary to revise regulations relating to State complaint procedures for programs authorized by this chapter.

The Senate recedes. The Secretary is directed to issue amended regulations making 24 CFR 78.780-783 applicable to Chapter 1.

92. The House bill, but not the Senate amendment, provides for the establishment of a National Commission on Migrant Education which is directed to conduct a study covering 12 specified issues and submit a report to the President and appropriate committees of Congress.

The Senate recedes with an amendment which calls for a more detailed study of the function and the effectiveness of the Migrant Student Records Transfer System, and a report to Congress and the Secretary of Education on such system within two years of the first meeting of the Commission.

93. The House bill, but not the Senate amendment, authorizes \$2 million for the Migrant Commission.

The Senate recedes.

94. The House bill, but not the Senate amendment, directs the Comptroller General to conduct a study of the *Aguilar v. Felton* decision on participation of children enrolled in private schools in programs funded under this chapter.

The House recedes with the understanding that ranking members of the House and Senate committees will request a one-time study by GAO of the impact of *Aguilar v. Felton*.

94(a). The House recedes to "materials" in the Senate provision.

95. The Senate amendment, but not the House bill, requires the Secretary to conduct a study of possible fund distribution

methods for various elementary and secondary education programs administered by the Department of Education and to submit a final report by June 30, 1991.

The Senate recedes with an amendment placing the study under Chapter 2.

96. The Senate amendment, but not the House bill, directs the Comptroller General to conduct a study on use of the AFDC count in the Chapter 1 formula and to submit results of the study no later than June 1, 1989.

The Senate recedes.  
97. The Senate amendment, but not the House bill, authorizes \$4 million for FY 89 and increases amounts for following years for carrying out the national longitudinal study and the study of fund distribution.

The Senate recedes.

98. The House bill, but not . . . .  
The House recedes.

99. The House bill, but not the Senate amendment, includes a definition of the term "effective schools programs."

The Senate recedes. The conferees intend that all elements noted as elements of an effective school must be present for a program to qualify as an effective schools program.

100. The House bill sets the transition period as October 1, 1987 not June 30, 1988, while the Senate bill begins the transition period on October 1, 1988, ending June 30, 1989.

The House recedes with an amendment changing the beginning of the transition period to July 1, 1988.

#### CHAPTER 2

1. The House bill, but not the Senate amendment, contains congressional findings for the Chapter 2 Program.

The Senate recedes.

2. a. The House bill, but not the Senate amendment, includes as stated purposes of the Chapter 2 Program: (a) provides initial funding to enable States and LEAs to implement programs; (b) provides a continuing source of innovation, educational improvement, and support for library and instructional materials; and (c) enhances the quality of teaching and learning through initiating and expanding effective schools programs. The Senate amendment includes the "minimum of paperwork" and "the responsibility for the design and implementation of programs" provisions (the same provisions are in the stated purposes of the House bill) under a section entitled, "State and Local Responsibility", which appears on the next page.

The Senate recedes requiring: (a) initial funding to enable States and LEAs to implement programs; (b) providing a continuing source of innovation, educational improvement, and support for library and instructional materials; and (c) enhancing the quality of teaching and learning through initiating and expanding effective schools programs. The House recedes to require that the minimum of paperwork and the responsibility for the design and implementation of programs provisions be included under the section entitled, "State and Local Responsibility".

b. The Senate amendment, but not the House bill, rewrites the purpose of the Chapter 2 Program to focus on six priorities: (1) at risk youth; (2) basic skills for secondary students; (3) gifted and talented education; (4) library resources; (5) school reform—innovation and personnel training; and (6) personal excellence.

The Senate recedes with a general description of the new uses of funds.

3. The Senate amendment, but not the House bill, describes State and local responsibility under a new paragraph (b), while

the House bill incorporates these purposes in paragraphs (3) and (4) of section 1501.

The House recedes.

4. The House bill contains a definition of "at risk and high cost children" while the Senate amendment describes at risk children in the General Statement of Purpose beginning on page 215.

The House recedes.

5. The House bill authorizes appropriations for the Chapter 2 Program at \$580 million for FY 1988 and such sums through 1993. The Senate amendment authorizes appropriations at \$580 million for FY 1989, \$610 million for FY 1990, \$640 million for FY 1991, \$672 million for FY 1992, and \$706 million for FY 1993.

The House recedes.

6. The House bill begins the period of assistance on October 1, 1987, while the Senate amendment begins assistance on October 1, 1989.

The House recedes.

7. The Senate amendment uses the phrase *shall reserve an additional amount not to exceed 6 percentum*, while the House bill uses the phrase *shall reserve not more than 6 percentum*.

The House recedes.

8. The Senate amendment uses the word *includes*, where the House bill uses the word *means*.

The House recedes.

9. The Senate amendment requires that the State distribute not less than 80% to the LEA, while the House bill requires the State to reserve not more than 20 percentum.

The House recedes.

10. The House bill, but not the Senate amendment, uses the phrase *adjusted relative enrollments*. The House bill uses the phrase *school attendance areas served by such agencies*, while the Senate amendment uses the phrase *school districts of such agencies*.

The House recedes.

11. Regarding the distribution of funds to local educational agencies:

a. The Senate amendment, but not the House bill, also includes "children living in economically depressed urban and rural areas" when referring to children whose education imposes a higher than average cost per child.

The House recedes with an amendment modifying the Senate's second criterion to "areas of high concentrations of low-income families".

b. The House bill, but not the Senate amendment, makes clear that these provisions shall not diminish the responsibility of the LEA's to maintain contact with private schools for advisory purposes.

The Senate recedes.

12. The House bill, but not the Senate amendment, modifies current law to require the Secretary to review criteria. Both bills require the Secretary to approve such criteria.

The Senate recedes.

13. The House bill, but not the Senate amendment, amends the high cost provision to require that funds are distributed in proportion to need, i.e., high cost students receive the higher allocations.

The Senate recedes with an amendment making the alternative allocation method permissive with the local educational agency.

The conferees intend that this section or the Chapter 2 program have no effect whatsoever on the distribution of funds among school districts within the States. Rather, that distribution will continue to be guided by other provisions of this chapter. The intent of this section is to provide school districts with an alternative method of allo-

cating funds generated by "high cost children" among schools within the school district. Again, the conferees have no intention of limiting school districts from allocating funds generated by "high cost children" in the same manner as is currently the practice, that is, by averaging the total allocation over all participating public and private schools. This section merely provides an alternative, at school district discretion, to current practice which continues to be allowed under this chapter.

The alternative described in subsection (2)(A) would allow districts, at their discretion, to distribute that portion of their Chapter 2 funds generated by "high cost children" to public and private schools in the district in proportion to the number of "high cost children" in each participating school. Subsection (2)(B) clarifies that regardless of which method of distribution a district chooses for its funds generated by "high cost children", the district must apply that method consistently across all public and private schools for that year of funding.

Finally, subsection (2)(C) makes clear that it is the intention of the conferees that nothing in this section should be construed so as to limit how a school chooses to use its funds within those allowable uses of funds established by this chapter between schools.

14. The House bill uses the phrase "shall submit", while the Senate amendment uses the phrase "shall file".

The Senate recedes.

15. The House bill uses the phrase *intermediate educational units* while the Senate amendment uses the phrase *intermediate regional units*.

The Senate recedes with an amendment referring to intermediate "or regional" educational units.

16. The Senate amendment, but not the House bill, modifies librarians with the phrase *elementary and secondary*.

The House recedes.

17. The House bill, but not the Senate amendment, includes school counselors and other pupil services personnel.

The Senate recedes.

18. The Senate amendment, but not the House bill, indicates that the amount reserved at the State level for targeted programs shall not exceed 20% of the total State allotment.

The House recedes with an amendment clarifying other authorized uses of funds.

19. The Senate amendment, but not the House bill, specifies that programs, projects, and activities must be included in the State plan. The House bill, but not the Senate amendment, requires the State to describe its use of funds for effective schools.

The House recedes in regard to the State uses of funds but with an amendment to describe the other uses of State funds.

The Senate recedes requiring the State to describe its use of funds for effective schools.

20. The House bill provides for an annual evaluation of the effectiveness of the Chapter 2 program. The Senate amendment provides for an evaluation of the effectiveness of Chapter 2 programs in FY 1992.

The House recedes with an amendment to require annual submission of data on use of funds, types of services provided, and students served.

It is highly desirable that at the State and national levels, the State educational agencies and the U.S. Department of Education cooperatively develop guidelines for reporting Chapter 2 programs' effectiveness on an annual basis in order to provide more uniform accountability to Congress in the use of, and the results of, Chapter 2 expenditures. Some of the information in the report will include: (1) expenditures in each area of

targeting funding; (2) results from high cost factor distribution; and (3) effective schools implementation, results and progress.

21. The House bill, but not the Senate amendment, requires the State to describe how it adjusts its formula for high cost children. The Senate amendment, but not the House bill, requires the State to describe how it will serve private school children.

The Senate recedes requiring the State to describe how it adjusts its formula for high cost children.

The House recedes requiring the State to describe how it will serve private school children.

22. The Senate amendment uses the word *period* in the heading for this section while the House bill uses the word *duration*.

The House recedes.

23. The House bill, but not the Senate amendment, deletes the provision in current law with respect to audits of LEAs which receive less than \$5,000.

The House recedes.

24. The House bill, but not the Senate amendment, contains provisions for State uses of Funds; (1) State administration will include: (a) supervision of the allocation of funds to LEAs, (b) planning, supervision, and processing of State funds, (c) monitoring and evaluation of programs and activities, (d) operations of the State advisory council; (2) technical assistance and direct grants to LEAs and statewide activities which assist LEAs in accomplishing the purposes of this Chapter; and (3) assistance to LEAs and statewide activities to carry out effective schools programs.

The Senate recedes with an amendment which describes State uses of funds as technical assistance which results in direct services to LEAs for targeted assistance as described in Section 1532 and direct grants to local educational agencies.

25. The House bill, but not the Senate amendment, specifies that: (a) not more than 25% of funds available for State programs under this part may be used for State administration, and (b) that not less than 25% of funds available for State programs may be used for effective schools. The Senate amendment creates a separate authorization for appropriations for effective schools in its title II. (See Item no. 46.)

25a. The Senate recedes.

b. The Senate recedes with an amendment requiring that 20% of a State's reserved funds must be used for effective schools and permits a waiver from this requirement if the SEA is already spending twice the amount specified for effective schools.

26. The House bill uses the phrase "is submitted", while the Senate amendment uses the phrase *has been certified*.

The Senate recedes.

27. The House bill uses the phrase *authorized programs*, while the Senate amendment uses the phrase *targeted assistance programs*, and requires the local education agency to provide reasons for the selection.

The House recedes.

28. The House bill uses the phrase *relating to such programs*, while the Senate amendment uses the phrase *relating to the assistance furnished under this chapter*.

The House recedes.

29. The House bill uses the phrase *funds for programs authorized*, while the Senate amendment uses the phrase *funds for assistance authorized*. The Senate amendment uses the phrase *as may be deemed appropriate by the LEA*, while the House bill uses the phrase *other groups involved* and includes examples.

The House recedes requiring the allocation of funds for assistance authorized.

The Senate recedes requiring that other groups be included in the local application process in terms of implementation.

30. The Senate amendment, but not the House bill, specifies that the local plan will include a description of how this chapter will contribute to improving student achievement and the quality of education for students.

The House recedes.

31. The House bill places a caveat subject to the limitations of the Chapter, while the Senate amendment uses the phrase *provisions*. The Senate amendment includes the phrase *how funds the agency receives* while the House bill uses the phrase *funds under this subpart*.

The House recedes.

32. The House bill uses the phrase *authorized purposes*, while the Senate amendment uses the phrase *targeted assistance*.

The House recedes.

33 a. The House bill requires the LEA to ensure, while the Senate amendment indicates it shall be the responsibility of the LEA.

The Senate recedes.

33 b. The House bill uses the phrase *subpart*, while the Senate amendment uses the phrase *chapter*.

The House recedes.

34. The House bill describes its use of funds consistent with the purposes stated previously while the Senate amendment describes use of funds consistent with targeted assistance described.

The House recedes with an amendment which describes the new uses of funds.

35. The Senate amendment, but not the House bill, limits the use of funds to programs or projects which provide for the following: at risk youth, basic skills instruction for secondary students; gifted and talented; school enrichment of secondary school curricula; library resources; reform innovation and personnel training; and programs for personal excellence.

The House recedes with an amendment which describes the new uses of funds.

State and local school districts may choose one, several, or all of the identified areas for expenditure of their funds in the identified programs except for 20% of the funds required for effective school at the State level.

36. The House bill, but not the Senate amendment, specifies that local funds may be used for effective schools programs and activities. The Senate amendment, but not the House bill includes in its Title II, a separate "effective schools program."

The Senate recedes.

37. The House bill, but not the Senate amendment, specifies that funds may be used to support innovative instructional programs, curricula, library books, and reference and other instructional materials and equipment which show promise for improving student achievement in basic skills (including reading, writing, and computational skills (and other critical subject areas, such as science and mathematics.))

The Senate recedes with an amendment which describes the new uses of funds.

38. The House bill, but not the Senate amendment, specifies that improvement activities may include the development of model curricula; the provision of grants to schools or teachers for innovative instructional approaches, the purchase of library books, reference materials, and instructional aids; and testing programs which lead to better academic achievement.

The Senate recedes with an amendment which describes the new uses of funds.

39. The House bill, but not the Senate amendment, also includes the improvement

of recruitment and training of individuals working with preschool children in education programs, in terms of personnel enhancement.

The Senate recedes with an amendment which describes the new uses of funds.

New uses of funds are as follows:

Programs to meet the educational needs of students at risk of school failure and dropping out and students for whom providing an education entails higher than average costs; programs for the acquisition and use of instructional and educational materials, including—library books, reference materials, computer software and hardware for instructional use, and other curricular materials that would be used to improve the quality of instruction; innovative programs designed to carry out schoolwide improvements, including effective schools program; programs of training and professional development to enhance the knowledge and skills of educational personnel, including teachers, librarians, school counselors and other pupil services personnel, school board members, and administrators; programs designed to enhance personal excellence of students and student achievement, including instruction in ethics, performing and creative arts, humanities, activities in physical fitness and comprehensive health education, and participation in community service projects; and other innovative projects which would enhance the educational program and climate of the school, including programs for gifted and talented students, early childhood education programs, community education and programs for youth suicide prevention.

In adding "personal excellence" as an allowable use of Chapter 2 funds, the Congress recognizes that the whole child must be addressed in terms of his/her education, health, and motivation. Personal excellence programs are based on partnerships or coalitions of public and private organizations who commit to pool their expertise and resources. The goal of these programs is to create an integrated school curriculum including basic education, health and physical fitness, and motivation through community service.

It is hope that through this community supported effort to influence at-risk youth through a variety of activities that meaningful changes will occur in their lives. That the expectations of the community for these young people will be raised and, as a result, their own goals will be raised and more likely to be achieved.

40. The Senate amendment, but not the House bill, contains administrative authority which specifies that in order to conduct the activities authorized by this part, each State or local educational agency may use funds reserved for this part to make grants to and enter into contracts with LEAs, institutions of higher education, libraries, museums, and other public and private agencies, organizations, and institutions.

The House recedes with an amendment limiting private agencies to only those which are non-profit.

41. The House bill, but not the Senate amendment, provides for youth suicide prevention, technology education, community education, and career education programs under special projects.

The Senate recedes.

42. The Senate amendment, but not the House bill, includes programs for technology education and youth suicide under the Secretary's fund for innovation in Title II of this bill.

The House recedes with an amendment to delete youth suicide programs under the Secretary's fund for innovation.

43. The House bill, but not the Senate amendment, defines the terms "gifted and talented", and "technology education".

The Senate recedes with an amendment deleting the definition of technology education.

44. The House bill specifies that funds for effective school programs will be used to revise those programs. The Senate amendment specifies that funds for effective schools will be used to strengthen those programs.

The Senate recedes with an amendment incorporating the word "strengthening" in the first paragraph of the House language regarding "effective schools".

45. The House bill requires each SEA to use 25% of the funds it retains at the State level for effective schools programs. The Senate amendment specifies a separate program authorization and application requirements for the "Effective Schools" program in Title II of the Senate amendment.

The Senate recedes with an amendment to reserve 20% of funds for effective schools and to enable the Secretary to waive the requirement if States are spending the equivalent of 40% of State money already for this purpose.

46. The Senate amendment, but not the House bill, creates a separate effective schools programs under their Title II with a separate authorization of appropriations at \$25 million for FY 1989, \$26.5 for FY 1990, \$27.5 for FY 1991, \$29 million for FY 1992, and \$30.5 million for FY 1993. (See Item No. 25.)

The Senate recedes.

47. The House bill requires that the Secretary submit an annual evaluation report to the Congress. The Senate amendment requires that the Secretary submit an evaluation report not later than October 1992.

The House recedes with an amendment to require the Secretary to submit data annually on the types of service, students served, and uses of funds.

48. The House bill, but not the Senate amendment, enables the Secretary to provide technical assistance for effective schools programs.

The Senate recedes. The conference agreement also incorporates a provisions clarifying the applicability to Chapter 2 of the General Education Provisions Act.

49. a. Both the House bill and the Senate amendment reserve 6% of the funds for the Secretary. The House bill requires that 34% of these funds be used for National Diffusion Network activities. The Senate amendment makes available not less than \$11,200,000 for the National Diffusion Network activities.

The House recedes.

b. From these same secretarial funds, the House bill makes available at least the amount of funds necessary to sustain the activities for the inexpensive book distribution program for reading motivation, the arts in education program, and the law-related education program. The Senate amendment provides for not less than \$8,200,000 for the inexpensive book distribution program; not less than \$3,500,000 for the arts in education program; and not less than \$3,200,000 for the law-related education program.

The House recedes.

50. The House bill uses the phrase *shall be directed toward*, while the Senate amendment uses the phrase *shall be designed to*.

The House recedes. The conferees intend that the National Diffusion Network shall be designed to improve the quality of education.

51. The Senate amendment, but not the House bill, provides a limitation which indicates that no funds appropriated may be used to support the development or implementa-

tion of a Program Significance Panel or any other similar entity whose purpose is to judge the suitability or appropriateness of projects for dissemination through the NDN by a process of reviewing, screening, selecting, or assisting the substantive content of projects.

The Senate recedes with an amendment which permits the Secretary to conduct a single external review by a program effectiveness panel to determine the effectiveness of a program which is to be disseminated through the National Diffusion Network (NDN). The conferees further intend that the NDN facilitators be State-based as opposed to regionally-based facilitators. However, the conferees believe that a national private school facilitator would provide significant assistance to the State-based facilitators in identifying and assisting NDN programs in private schools. The conferees therefore envision that a national private school facilitator should be established under the NDN program.

52. The House bill reserves funds available under the arts in education program for arts for individuals with handicaps through arrangements with the National Committee, Arts for the Handicapped. The Senate amendment reserves these funds through arrangements with the organization, Very Special Arts.

The House recedes.

53. The Senate amendment, but not the House bill, authorizes a "Blue Ribbon Schools Program".

The House recedes.

54. The Senate amendment, but not the House bill, sets aside not less than \$1.5 billion from the Secretary's funds for a "Blue Ribbon Schools Program."

The House recedes with an amendment requiring that no more than \$1.5 million be used for this program.

55. The House bill, but not the Senate amendment, requires that the Secretary shall design and implement a study to determine the impact of effective schools programs including relevant measures of the impact including student achievement, attitudes, and graduation rates.

The Senate recedes with an amendment changing the first sentence to read "From the funds available for the purposes of this part the Secretary shall contract with a qualified organization or agency to conduct a national study of effective schools programs to determine the impact of effective schools programs under this chapter"; and moving the requirement to Title VI of the Act.

58. (a) The House bill uses the phrase *which further the purposes specified*, while the Senate amendment uses the phrase *which contribute to carrying out the purposes*. The House bill and the Senate amendment indicate that these programs may be carried out through grants or contracts. The House bill describes this in section 1567 while the Senate amendment creates a new subsection B for this purpose.

The House recedes.

b. The Senate amendment, but not the House bill, through a separate section (b) authorizes the Secretary to carry out programs and projects under this section directly, or through grants to or contracts with SEAs, LEAs, institutions or higher education, and other public and private agencies, organizations, and institutions. The House bill also includes this provision although not in a separate section.

The House recedes with an amendment limiting private organizations to those which are non-profit.

57. The House bill begins the transition period on October 1, 1987, and ends on June

30, 1988. The Senate amendment begins the transition period on October 1, 1988 and ends on June 30, 1989.

The House recedes with an amendment changing the beginning effective date to July 1, 1988.

58. The House bill, but not the Senate amendment, requires that the Secretary of Education conduct a study of school reform efforts in order to evaluate the impact of recent State and local elementary and secondary educational reforms. The House bill further delineates specific area to be included in the study. The House bill, but not the Senate amendment, authorizes appropriations of \$1 million to carry out the school reform study.

The Senate recedes with an amendment placing the study under the National Center for Education Statistics (NCES) and requiring that the NCES shall conduct a study on the effects of higher standards resulting from school reform on enrollment and persistence in schooling. The study shall emphasize achievement and graduation rates of low income, handicapped, limited English proficient, and educationally disadvantaged students.

59. The House bill, but not the Senate amendment, authorizes the establishment of an Office of Comprehensive School Health Education.

The House recedes with an amendment moving the program to the Secretary's fund for innovation.

60. The Senate amendment makes provision for an office under Title II, Secretary's funds for innovation.

The Senate recedes.

61. The House bill, but not the Senate amendment, provides for a study of fund-distribution which will include among other areas a consideration of whether States and local school districts should be rewarded for making greater tax and fiscal efforts in support of general elementary and secondary education through adjustment of allocations under the various Federal financial assistance programs. The House bill further requires that the Secretary shall submit an interim report of the study on June 30, 1988, and submit the final report not later than June 30, 1989. The Senate amendment includes this study under Chapter 1.

The House recedes with an amendment changing the dates of the reports to June 30, 1990 and June 30, 1991.

#### TITLE II—CRITICAL SKILLS

##### PART A—MATHEMATICS AND SCIENCE EDUCATION

1. *Critical Skills Improvement.* The House bill repeals Title II of the Education for Economic Security Act and incorporates the substance into the new School Improvement Act as Title II, the "Critical Skills Act." The Senate amendment reauthorizes Title II of the Education for Economic Security Act.

The Senate recedes with an amendment; Title II will be entitled "Critical Skills", part A of which will be the "Dwight D. Eisenhower Mathematics and Science Education Act".

2. Both bills contain statements of purpose, but the Senate amendment specifically mentions that funds can be used for computer learning, and continues to list it in addition to mathematics and science throughout this part.

The Senate recedes with an amendment adding "through assistance to State educational agencies, local educational agencies, and institutions of higher education" and removing computer learning from the permissible use of funds.

3. The House bill authorizes \$400 million for fiscal year 1988 and such sums for the succeeding five fiscal years. The Senate amendment authorizes \$280 million for

fiscal year 1989, \$295 million for fiscal year 1990, \$315 million for fiscal year 1991, \$335 million for fiscal year 1992, and \$355 million for fiscal year 1993.

The House recedes with an amendment authorizing \$250,000,000 for fiscal year 1989, and such sums thereafter.

4. The House bill reserves 5% for the Secretary's discretionary grants whereas the Senate amendment reserves 4%. The House bill reserves ¼ of 1% for Indian programs and not more than ¼ of 1% for the territories whereas the Senate amendment reserves a minimum of ¼ of 1% for Indian programs and the remaining amount for the territories.

The Senate recedes, with an amendment clarifying that students "served by schools funded by the Secretary of Interior" are covered by the program and reducing from "5 percent" to "4 percent" the amount reserved for the Secretary.

5. The House bill allocates funding to the States: one-half on school-age population and one-half on the Chapter 1 distribution, with a hold-harmless for each State's fiscal 1987 allocation. The Senate amendment allocates all the funds according to school-age population with no hold-harmless provision.

The Senate recedes.

6. The Senate amendment, but not the House bill, authorizes the Secretary to prescribe whatever he determines best for the programs for Indian students.

The House recedes.

7. The House bill permits a State department of education to reserve up to 20% of the funds for its programs, of which one-half must be available to the State agency for higher education. The Senate amendment reserves 25% for higher education programs and 75% for elementary and secondary education programs.

The House recedes with an amendment requiring 90% of the amount received by the State educational agency to be distributed to local educational agencies.

8. The House bill requires half of the elementary and secondary education funds to be distributed to local school districts using the count of AFDC and census-determined poor children whereas the Senate amendment limits such distribution to the count of census-determined children.

The Senate recedes.

9. The House bill, but not the Senate amendment, requires with some exceptions the creation of consortia of local educational agencies receiving grants of less than \$3,000 a year.

The Senate recedes with an amendment permitting the use of a consortium arrangement when an LEA applies for funds.

10. Both bills require an application from the State for the receipt of funds, but the House bill provides that the application shall cover a period of three years and specifies three parts of the application—assurances, assessment data, and description—with content requirements for each part while the Senate amendment State Application section does not specify a three year application period and mixes descriptive, assessment, procedure, and assurance requirements in a single subsection.

The House bill, but not the Senate amendment, requires that the State application be developed in consultation with the State agency for higher education and describe how that agency and the SEA have coordinated use of funds under this part.

The Senate recedes with an amendment clarifying the application procedure and the contents of the applications.

11. The House bill, but the Senate amendment, requires a local application. However, both bills require a local assessment of need for assistance before an LEA can receive a

grant. The House bill provides for a more detailed assessment as part of its application requirements and requires that programs be evaluated.

The Senate recedes with an amendment simplifying the requirements for the contents of the local applications.

12. Both bills require the SEA to renew assistance to an LEA showing this progress; however, the Senate amendment more precisely defines this standard as showing the involvement of a substantial number of teachers and several grade levels of instruction.

The Senate recedes.

13. The House bill provides a list of uses for the 20% of funds reserved for State use. This includes a 5% cap on administration for each State agency (SEA and SAHE) while the Senate amendment provides 10% of the 75% reserved for LEA programs to be administered by the SEA.

The House recedes with an amendment removing computer learning from the authorized uses of funds.

14. The House bill permits States to reserve up to 20% of the State's grant for direct grants, State-wide programs, technical assistance, and State administration of which no more than 5% can be used for administration (allocated 1% for the State agency for higher education and 4% for the State educational agency). The Senate amendment permits a reservation of 90% of the 75% of a State grant which must be used for elementary and secondary education programs and the remaining 10% to be used as follows: not less than 5% for SEA demonstration and exemplary programs and not more than 5% for SEA technical assistance and administration.

15. The House bill contains a comprehensive listing of activities which may be funded by LEAs and limits funding of local administration to 5% of an LEA's grant. The Senate amendment authorizes funding only of training activities and, if such needs are met, the acquisition of materials and equipment.

On items 14 and 15, the House recedes with an amendment clarifying various uses of funds at the local level.

16. The House bill, but not the Senate amendment, delineates the types of activities which SEA and LEA can fund with regard to teacher training.

The House recedes with an amendment that teacher training activities will be referenced generally in the section on higher education and local uses of funds.

17. The Senate amendment, but not the House bill, delineates the activities which State higher education agencies can fund with the 25% of the States' grant reserved for their uses. Up to five percent may be used for State assessment and administration and not less than 95% must be used for grants to institutions of higher education for training programs conducted in conjunction with LEAs.

The House recedes with an amendment which clarifies the uses of funds by institutions of higher education.

18. The House bill, but not the Senate amendment, provides for a "bypass" for private school participation if an institution of higher education is prohibited by law for serving children and teachers in such schools.

The Senate recedes.

19. The House bill, but not the Senate amendment, imposes certain duties on the Secretary regarding technical assistance, evaluations, and reporting standards.

The Senate recedes with an amendment which requires the Secretary to consult with State and local agencies and organiza-

tions to develop reporting standards and to submit a report to Congress every two years.

20. Both bills describe the activities which the Secretary may fund from sums reserved to him. The House bill, unlike the Senate amendment, permits grants to professional foreign language associations, reserves 25% of each year's funds for critical foreign language grants, and requires the Secretary to disseminate widely the information concerning the grants. The Senate amendment, unlike the House bill, authorizes cooperative agreements, gives special consideration for grants involving methods and scientific inquiry and giving preference to grants disseminating programs throughout a region.

The Senate recedes with an amendment which clarifies the national uses of funds.

21. The Senate amendment, unlike the House bill, requires the Secretary to reserve annually not to exceed \$3 million for the Office of Educational Research and Improvement for conducting evaluation and research activities.

22. The Senate amendment, unlike the House bill, includes a section regarding payments, including a requirement for prompt payment of grants.

On items 21 and 22, the Senate recedes.

23. Both bills authorize presidential awards for foreign language teachers. The House bill, unlike the Senate amendment, requires consultation with representatives of a professional foreign language teacher association. The Senate amendment, unlike the House bill, increases the presidential awards for math and science teachers from 100 to 104 a year. The House bill authorizes \$1 million for fiscal year 1988 and such sums for the five succeeding years whereas the Senate amendment contains a payment authorization of \$1 million a year for this purpose.

The House recedes with an amendment raising the authorization level to \$2 million and requiring consultation with representatives of professional foreign language teacher associations.

24. The House bill extends the Partnership in Education Program by authorizing \$10 million for fiscal year 1988 and such sums for the five succeeding years. The Senate amendment authorizes \$20 million for fiscal year 1988 and such sums for the five succeeding years for this purpose.

The Senate recedes with an amendment authorizing \$15 million for FY 1989 and such sums in fiscal years 1980 through 1993.

25. The Senate amendment, unlike the House bill, contains a definition of "junior or community college".

The Senate recedes. The conference agreement also adds foreign language assistance and presidential awards in math, science and foreign language as parts B and C of this title.

The Star Schools Program and the Foreign Language Assistance Program are also increased in this title with perfecting amendments.

It has been brought to the attention of the conferees that the Young Astronaut Program, as national program of educational significance in mathematics, science, and technology, is beginning to expand in large urban school district and is having an impact in terms of bringing mathematics, science, computer learning, and related technology to historically underrepresented populations.

#### TITLE III—MAGNET SCHOOLS PROGRAM

1. *Magnet Schools.* The House bill authorizes appropriations at \$115 million for FY 1988 and at such sums through 1993.

The Senate amendment authorizes appropriations at \$115 million for FY 1989, \$121

million for FY 1990, \$127 million for FY 1991, \$133 million for FY 1992, and \$140 million for FY 1993.

The House recedes with an amendment authorizing appropriations in the amount of \$165 million for fiscal year 1989 and such sums through 1993.

2. The Senate amendment, but not the House bill, specifies that in making awards from amounts appropriated above \$75 million, priority should be given to LEAs which meet the requirements of Section 3002, and have not received a Magnet Schools grant in the previous year.

The House recedes.

In regard to Section 3001(b), availability of funds for grants to agencies not previously assisted, the conferees intend that this provision will not affect prior obligations made under a two-year grant cycle.

Further, the conferees are very concerned about the large number of local educational agencies that have applied for magnet school assistance and have not received funding. In 1987, for example, the Department received 126 applications and awarded 38 grants; over two-thirds of the districts applying were rejected. The conferees recognize that many of these unfunded local educational agencies, including such cities as Cleveland, Boston, Los Angeles, and Detroit, have a real need for magnet school funds. The conference agreement, therefore, requires that out of new money appropriated for the program, the Secretary shall give special consideration to applications which were not funded during the previous grant cycle. This provision applies only to funds appropriated above the fiscal year 1987 level of \$75 million. The conference agreement makes clear that the Secretary shall not use previous funding as a factor in awarding the first \$75 million.

3. The House bill, but not the Senate amendment, retains the current law provision that an LEA is eligible to receive assistance under this Act if it received \$1 million less in the first FY after the repeal of the Emergency School Aid Act.

The House recedes.

4. The Senate amendment, but not the House bill, includes in its application assurances that the agency will not engage in handicapped or sexual discrimination.

The House recedes.

5. The Senate amendment, but not the House bill, also includes as application requirements the following: (a) a description of how assistance made available will be used to promote desegregation; (b) a provision of assurances that the agency will carry out a high quality education program that will encourage greater parental choice and involvement; and (c) a description of the number in which the LEA will continue the magnet schools program after assistance is no longer available under this part.

The House recedes with an amendment rephrasing the provision of assurances that the agency will carry out a high quality education program in order to assure that greater parental decision-making and involvement will be encouraged.

6. The House bill indicates that the Secretary shall not make a determination about the award of funds solely on the basis of whether an applicant received an award in a prior funding cycle. The Senate amendment specifies that in awarding grants with the first \$75 million, the Secretary shall not take into account whether an LEA has received an award in the prior funding cycle.

The House recedes with an amendment stating the provision as applying in "any prior funding cycle."

7. The Senate amendment, but not the House bill, allows the Secretary to give special consideration to the degree to which

the program involves the collaborative efforts of institutions of higher education, community-based organizations, the appropriate SEA, or any other private organization.

The House recedes.

8. The House bill, but not the Senate amendment, retains the current law provision which indicates that the Secretary may waive the prohibition against the reduction of Chapter 2 assistance received and permit such a reduction if the State demonstrates that the assistance under Chapter 2 is not necessary to the particular LEA.

The House recedes.

9. The House bill, but not the Senate amendment, requires that notwithstanding section 412 of GEPA, not more than 15% of funds available for each FY for the purpose of this title may remain available for obligation and expenditure during the succeeding FY.

The Senate recedes.

10. The House bill, but not the Senate amendment, specifies that the provisions of this subsection shall not apply if grants are not awarded in a timely manner.

The Senate recedes.

11. The House bill, but not the Senate amendment, specifies that the Secretary may not reduce any payment under this title for any FY by any amount on the basis of the availability of funds pursuant to sections 412 (b) and (c) of GEPA. The Senate amendment, but not the House bill, requires that payments for a FY shall remain available for obligation and expenditure by the recipient until the end of the succeeding FY, except that no such agency shall receive more than \$4 million in any one FY.

The Senate recedes requiring that the Secretary may not reduce any payment under this title for any fiscal year on the basis of the availability of funds pursuant to GEPA. The House recedes on the provision that payments for a fiscal year shall remain available for obligation and expenditure by the recipient until the end of the succeeding fiscal year except that no agency shall receive more than \$4 million in any one fiscal year.

12. The Senate amendment, but not the House bill, requires that to the extent practicable, for any fiscal year, the Secretary shall award grants to LEAs under this title no later than July 1 of the applicable fiscal year.

The House recedes with an amendment changing "July 1, 1987" to "June 30, 1988".

13. The Senate amendment, but not the House bill, authorizes a new Part B, Magnet Schools for Educational Improvement at an authorization level beginning in FY 1989 at \$35 million and triggered by an appropriation for Part A of \$100 million.

The House recedes with an amendment moving these provisions, as amended, to the Secretary's fund for innovation and changing the name of the program to Alternative Curriculum Schools. The Alternative Curriculum Schools program will not receive any funds until the current magnet schools program is funded at \$165 million.

#### TITLE IV—SPECIAL PROGRAMS AND TITLE V—DRUG EDUCATION

##### GIFTED AND TALENTED

1. *Gifted and Talented.* The Senate \* \* \*. The House recedes.

2. The House bill uses the language "gifted and talented children and youth" throughout the bill.

The Senate amendment uses the language "gifted and talented students".

The House recedes.

3. The House bill, but not the Senate amendment, includes a definition for "Sec-

retary." The Senate amendment uses the definition under chapter I.

The House recedes.

4. The House bill, but not the Senate amendment, requires that there be consultation with the advisory committee in the establishment of programs.

The House recedes with an amendment striking the reference to the proposed National Advisory Council and inserting instead "after consultation with experts in the field of the education of gifted and talented students".

5. The House bill, but not the Senate amendment, requires that the Director of the National Center shall consult with the advisory committee appointed by the Secretary.

The House recedes with an amendment striking the reference to the proposed National Advisory Council and inserting instead "after consultation with experts in the field of the education of gifted and talented students".

6. The House bill, but not the Senate amendment, requires that both the advisory committee and the Secretary establish the highest program priorities.

The House recedes with an amendment to eliminate the advisory council in this provision.

7. The House bill includes language which states, "including the participation of teachers and other personnel serving such children in preservice and inservice training programs".

The Senate amendment states "including the participation of teachers and other personnel in preservice and inservice training programs for serving such children".

The House recedes.

8. The House bill, but not the Senate amendment, provides for the establishment of a Secretary's gifted and talented advisory committee.

The House recedes.

9. Although the House bill and the Senate amendment contain the same language, they use different formats. The House bill contains the language in one paragraph. The Senate amendment numbers the requirements 1, 2, and 3.

The House recedes.

10. The House bill uses the language "gifted and talented children and youth".

The Senate amendment uses the language "gifted and talented students".

The House recedes.

11. The House bill authorizes appropriations in the amount of \$25 million for FY 1988 and such sums as may be necessary through 1993.

The Senate amendment authorizes appropriations in the amount of \$15 million for FY 1989, \$15.8 million for FY 1990, \$16.6 million for FY 1991, \$17.4 million for FY 1992, and \$18.3 million for FY 1993.

The Senate recedes with an amendment authorizing \$20 million in 1989 and such sums through 1993.

12. The Senate amendment, but not the House bill, includes an application requirement as a separate provision.

The House recedes.

13. The Senate amendment, but not the House bill, includes a priority for approval of applications; that at least one-half of the approved applications provide service to gifted and talented economically disadvantaged students.

The House recedes.

#### DRUG EDUCATION

1. *Drug Education.* The House bill, but not the Senate amendment, reauthorizes the Drug Free Schools and Communities Act of 1986 through 1993 at an authorization level of \$250 million for FY 1988 and

"such sums as necessary" for FY 1989, 1990, 1991, 1992, and 1993.

The Senate recedes with an amendment authorizing \$250 million in 1989 and such sums through 1993.

2. The House bill, but not the Senate amendment, contains a provision which indicates that grants and contracts will include a youth suicide prevention program.

The Senate recedes to the provision which includes an amendment to current law requiring that grants and contracts will include a youth suicide prevention program.

3. The House bill, but not the Senate amendment, requires that applications submitted by States will also include a description of how, where feasible, the alcohol and drug abuse programs will be coordinated with youth suicide prevention programs funded by the Federal Government, State and local governments, and nongovernmental agencies and organizations, in addition to all of the other requirements of this part.

The Senate recedes to the provision which includes a requirement that applications submitted by States will also include a description of how, where feasible, the alcohol and drug abuse programs will be coordinated with youth suicide prevention programs funded by the Federal Government, State and local governments, and nongovernmental agencies and organizations, in addition to all of the other requirements of this part.

4. The House bill, but not the Senate

The Senate recedes with a technical amendment changing language in current law from the relative numbers of children in the school-age population to their relative enrollments in public and private nonprofit schools in terms of the State educational agency distribution of funds for use among areas served by local or intermediate educational agencies or consortia.

5. The House bill, but not the Senate amendment, inserts new language in Section 5128: "(D) describe the extent of the current drug and alcohol problem in the schools of the applicant."

The Senate recedes to the provision which requires that the local applications include a "description of the extent of the current drug and alcohol problem in the schools of the applicant".

6. The House bill, but not the Senate amendment, specifies that an applicant shall submit to the State educational agency a progress report on the first two fiscal years of implementation of its plan. The progress report shall include: (A) the applicant's significant accomplishments under the plan during the preceding two years; and (B) the extent to which the original objectives of the plan are being achieved. The House bill also adds language as indicated: (2) If the State educational agency determines that the applicant's progress report shows that it is not making reasonable progress toward accomplishing the objectives of its plan and the purposes of this Act, the State educational agency shall provide such technical assistance to the applicant as may be necessary."

The Senate recedes to the provision which requires that an applicant shall submit to the State educational agency a progress report on the first two fiscal years of implementation of its plan. The progress report shall include: (a) the applicant's significant accomplishments under the plan during the preceding two years; and (b) the extent to which the original objectives of the plan are being achieved. The House bill also adds the following language: "If the State educational agency determines that the applicant's progress report shows that it is not making reasonable progress toward accomplishing the objectives of its plan and the purposes

of this Act, the State educational agency shall provide such technical assistance to the applicant as may be necessary."

7. The House bill, but not the Senate amendment adds a new Section 5127 as follows: "STATE REPORTS—Each State shall submit to the Secretary an annual report that contains information on the State or local programs the State conducts under this Act."

The Senate recedes with an amendment requiring a 2-year report as opposed to an annual report.

8. The House bill, but not the Senate amendment, adds language "directly or through grants, cooperative agreements, or contracts" after the word "shall".

The Senate recedes to the provision which allows the Secretary to administer this program through grants, cooperative agreements, or contracts.

9. The House bill, but not the Senate amendment, requires that the Secretary of Education in conjunction with the Secretary of Health and Human Services will also include "a study of the relationship between drug and alcohol abuse and youth suicide," in the report to be submitted to the President and the appropriate committees of the Congress.

The Senate recedes to the provision which requires that the Secretary of Education in conjunction with the Secretary of Health and Human Services will include "a study of the relationship between drug and alcohol abuse and youth suicide," in a report to be submitted to the President and the appropriate committees of the Congress.

10. The House bill, but not the Senate amendment, inserts the word "funded" and deletes the word, "operated".

The Senate recedes to the provision changing the word "operated" to the word "funded" when making reference to Indian children and the Department of the Interior.

11. The House bill, but not the Senate amendment, adds new language which states, "make grants to or enter into cooperative agreements or contracts".

The Senate recedes to the provision which allows the Secretary to administer this program through grants, cooperative agreements, or contracts in the Hawaiian Natives section.

12. The House bill, but not the Senate amendment, adds new language as follows: "through grants, cooperative agreements, or contracts".

The Senate recedes to the provision which allows the Secretary to administer this program through grants, cooperative agreements, or contracts in the Regional Centers section.

13. The House bill, but not the Senate amendment, contains a provision which changes language in current law from "State, State educational agency, or State agency for higher education" to "State, agency, or consortium."

The Senate recedes to the provision which changes language in current law from "State, State educational agency, or State agency for higher education" to "State, agency, or consortium."

#### WOMEN'S EDUCATIONAL EQUITY ACT (WEEA)

1. *WEEA.* The House bill, but not the Senate amendment, contains a definition for the term "Council".

The House recedes.

2. The Senate amendment, but not the House bill, contains a stipulation regarding the development of materials by indicating "where such materials are commercially unavailable".

The House recedes.

3. The House bill provides that \$6 million shall be used to support activities described in paragraph (1)—(demonstration, development, and dissemination activities of national, statewide, or general significance, etc.); and that any funds in excess of this amount may be used to support new activities.

The Senate amendment provides that \$3 million shall be used to support activities described in paragraph (1), and that any funds in excess of this amount may be used to support new activities.

The Senate recedes with an amendment authorizing \$4.5 million for demonstration, development, and dissemination activities.

4. The Senate amendment, but not the House bill, includes the language, "where appropriate an evaluation or estimate of the potential for continued significance following completion of the grant period."

The House recedes.

5. The House bill provides that for challenge grant recipients, the Secretary is authorized to make grants to public and private nonprofit agencies and to individuals.

The Senate amendment authorizes the Secretary to make challenge grant awards to public agencies and private nonprofit organizations and consortia of these groups and to individuals.

The House recedes.

6. The House bill retains the "National Advisory Council on Women's Educational Programs" within the Department of Education.

The Senate amendment abolishes the Council.

The House recedes. The conferees want to stress that the abolition of the National Advisory Council should, in no way, be interpreted as an abandonment of or lack of commitment to women's educational equity. Quite the contrary, it is the conferees' hope that the funds used to support the Council would go instead to the support of program activities on behalf of women's educational equity, which is an important and valuable program that deserves the increased funding provided in the conference agreement. The conferees also want to stress the need within the Federal Government for a national council that will deal with the general concerns of the women of this nation. The conferees, therefore, would urge that serious consideration be given to the re-establishment of a council similar to the National Advisory Council for Women formerly administered within the Department of Labor.

7. The House bill, but not the Senate amendment, contains language which addresses the distribution of the evaluation report and the Council's role in the evaluation process.

The House recedes.

8. The House bill indicates that the Office of Educational Research and Improvement shall evaluate and disseminate (at low cost) all materials and programs developed under this part.

The Senate amendment indicates that the Secretary, through the Office of Educational Research and Improvement, shall evaluate and disseminate materials and programs developed under this part.

The House recedes with an amendment to include a requirement that dissemination of materials be "(at low cost)".

9. The House bill authorizes appropriations in the amount of \$10 million for 1985, \$12 million for 1986, \$14 million for FY 1987, \$20 million for FY 1988, and such sums through 1993.

The Senate amendment authorizes appropriations in the amount of \$5.3 million for FY 1989, \$5.6 million for FY 1990, \$5.9 million for FY 1991, \$6.2 million for FY 1992, and \$6.5 million for FY 1993.

The Senate recedes with an amendment authorizing \$9 million for 1989, and such sums through 1993.

10. The Senate amendment, but not the House bill, includes a special rule in respect to approving applications regarding special consideration and geographic distribution.

The House recedes.

#### ELLENDER FELLOWSHIPS

1. *Ellender Fellowships*. The House bill, but not the Senate amendment, contains a provision that would allow up to 5% of the funds appropriated to be used for the development of additional programs and learning activities for educators and the elderly at the local and state level.

The House recedes.

2. The Senate amendment, but not the House bill, includes the following groups: gifted and talented students and students of migrant parents.

The House recedes.

3. The House bill, but not the Senate amendment, requires the application for Close-up to fully describe the use of funds for the new programs for educators and the elderly.

The House recedes.

4. The House bill authorizes \$2.5 million for FY 1988 and such sums as may be necessary for the five subsequent years. The Senate amendment authorizes \$3 million for FY 1989, \$4.5 million for FY 1990, \$4 million for FY 1991, \$4.5 million for FY 1992, and \$5 million for FY 1993.

Both the House and the Senate recede to authorize for Part 1, \$3 million for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 through 1993.

5. The Senate amendment, but not the House bill, authorizes a new program for Close-up to assist educationally disadvantaged older Americans and recent immigrants to a greater understanding of the Federal government. There are authorized \$3 million for fiscal year 1989, \$3.5 million for fiscal year 1990, \$4 million for fiscal year 1991, \$4.5 million for fiscal year 1992 and \$5 million for fiscal year 1993; however no funds may be appropriated for the new program unless funds are appropriated in the amount authorized for the regular Close-up program.

The House recedes with an amendment to authorize a new program for Close Up to assist economically disadvantaged older Americans and recent immigrants. The program is authorized at \$2 million for fiscal year 1989, and such sums as may be necessary through 1993. This new program may only be funded if the current Close Up program receives at least enough funding to maintain current services.

#### IMMIGRANT EDUCATION

1. *Immigrant Education*. The House bill, but not the Senate amendment, reauthorizes the Emergency Immigrant Education Act at an authorization level of \$40 million for FY 1989 and at "such sums as may be necessary" for each of the fiscal years 1990, 1991, 1992, and 1993.

The Senate recedes.

2. The House bill, but not the Senate amendment, requires that the Secretary receive an annual report from each State educational agency receiving funds. The report may include such information as services provided, number of students served, nationality of students served, and any other such information which may lead to more improved reporting as may be required by the Secretary.

The Senate recedes with an amendment requiring a 2-year report as opposed to an annual report.

3. The House bill, but not the Senate amendment, requires that the Secretary submit an annual report to the House Committee on Education and Labor, Senate Committee on Labor and Human Resources including services provided to this population, number of students served, nationality of students served and any other such information which may lead to more improved reporting.

The Senate recedes with an amendment requiring a 2-year report as opposed to an annual report.

4. The House bill, but not the Senate amendment, requires the Comptroller General of the United States to conduct a national assessment of programs under this Part by March 15, 1989, and every third year thereafter to be submitted to the House Committee on Education and Labor and Senate Committee on Labor and Human Resources.

The Senate recedes with amendments stating that the Comptroller General of the United States shall review and assess programs conducted under this part and submit the findings to the appropriate committees of Congress by March 15, 1991. The study is included in Title VI of this Act.

#### TERRITORIAL ASSISTANCE

1. *Territorial Assistance*. The House bill authorizes \$5 million for FY 1988 for general education assistance to the Virgin Islands and for each of the five succeeding years. The Senate amendment authorizes \$5 million for FY 1989, \$5.5 million for FY 1990, \$6 million for FY 1991, \$6.5 million for FY 1992, and \$7 million for FY 1993.

The House recedes with an amendment authorizing \$5 million for 1989 and such sums through 1993.

2. The House bill authorizes \$2 million for fiscal year 1988 for territorial teacher training assistance and for the five succeeding years while the Senate amendment authorizes \$2 million for FY 1989, \$2.1 million for FY 1990, \$2.2 million for FY 1991, \$2.4 million for FY 1992 and \$2.6 million for FY 1993.

The House recedes with an amendment authorizing \$2 million for 1989 and such sums through 1993.

#### EXCELLENCE IN EDUCATION

1. *Excellence in Education*. The House bill, but not the Senate amendment, reauthorizes the Excellence in Education Act.

The Senate amendment, but not the House bill, repeals the Excellence in Education Act.

The House recedes.

#### TITLE VII—BILINGUAL EDUCATION

1. The House bill, but not the Senate amendment, contains language in its statement of policy that the instructional use and development of a child's non-English native language promotes student self-esteem, subject matter achievement, and English-language acquisition.

The Senate recedes.

2. The Senate amendment, but not the House bill, in its statement of policy contains language as follows: (1) reliance on student evaluation procedures which are inappropriate for limited English proficient students (LEP) has resulted in the disproportionate representation of LEP students in special education, gifted and talented, and other special programs; and (2) many schools fail to meet the full instructional needs of LEP students who also may be handicapped or gifted and talented.

The House recedes. The conferees substitute sets forth the finding that limited English proficient students are disproportionately represented (both over- and under-rep-

resented) in special instructional programs, including special education and programs for gifted and talented students because of reliance on linguistically inappropriate student evaluation procedures which fail to correctly measure the needs and abilities of limited English proficient students.

3. The House bill, but not the Senate amendment, includes a phrase which indicates that bilingual education programs help promote our international competitiveness.

The Senate recedes.

4. The House bill, but not the Senate amendment, provides that there is a serious shortage of teachers and education personnel who are professionally trained and qualified to serve LEP children.

The Senate recedes.

5. The House bill, but not the Senate amendment, includes in its declaration of policy that programs for LEP students shall also be designed to meet school grade-promotion and graduation requirements.

The Senate recedes.

6. The House bill extends this Act for fiscal year 1988 through 1993 at such sum as may be necessary.

The Senate amendment also extends the Act through 1993 beginning in FY 1989, but authorizes appropriations in the amount of \$168 million for FY 1989, \$176.5 for FY 1990, \$185.3 for FY 1991, \$194.5 for FY 1992, and \$200.4 for FY 1993.

The Senate recedes authorizing \$200 million for FY 1989 and such sums through 1993.

7. The House bill, but not the Senate amendment, indicates that no amount in excess of \$246 million is authorized to be appropriated for FY 1988.

The Senate amendment, but not the House bill, specifies that no amount in excess of \$176 million is authorized to be appropriated for FY 1989.

The Senate recedes authorizing \$200 million for FY 1989.

8. The Senate amendment, but not the House bill, requires that the reservation required for the Special Alternative Instructional Program shall not result in changing the terms, conditions, and negotiated levels of any grant awarded in FY 1987.

The House recedes.

9. Both the House bill and the Senate amendment require that at least 60 percent of appropriations be reserved for grants for the following (Part A) programs: (1) transitional bilingual education; (2) programs of developmental bilingual education; (3) special alternative instructional programs; (4) programs of academic excellence; (5) family English literacy programs; and (6) bilingual preschool, special education, and gifted and talented programs preparatory or supplementary to programs such as those assisted in this Act.

The Senate amendment also includes a program to develop instructional materials in this 60%.

The Senate recedes.

10. The Senate amendment, but not the House bill, specifies that at least 75 percent of the 60 percent appropriated for Part A must be reserved for transitional bilingual education which may include programs of developmental bilingual education, academic excellence, family English literacy, and bilingual preschool, special education, and gifted and talented.

The House recedes.

11. The House bill, but not the Senate amendment, specifies that not less than 20 percent of the appropriations be reserved for training and technical assistance.

The Senate amendment, but not the House bill, specifies that at least 25 percent

of the appropriations be reserved for training and technical assistance.

The House recedes.

12. The House bill, but not the Senate amendment, requires that training and technical assistance receive as much funding in any fiscal year as was appropriated in FY 1987.

The House recedes.

13. The House bill, but not the Senate amendment, requires that the transitional and developmental bilingual education programs as well as the special alternative instructional programs receive at least as much funding in any fiscal year as was appropriated for each of them in FY 1987.

The House recedes.

14. The House bill, but not the Senate amendment, requires that in any fiscal year, programs of academic excellence, family English literacy, and bilingual preschool, special education, and gifted and talented, receive as much in the aggregate as they did in FY 1987.

The House recedes.

15. The House bill, but not the Senate amendment, requires that for any amount above FY-1987 funding, the Secretary must first increase each amount reserved for bilingual education programs to cover the cost of inflation as measured by the consumer price index.

The House recedes.

16. The House bill, but not the Senate amendment, requires that not less than 70 percent and not more than 75 percent of new funds remaining after providing cost-of-living increases must go to alternative instructional programs.

The House recedes.

17. The Senate amendment, but not the House bill, permits the Secretary to reserve up to 25 percent of the 60 percent of reserved funds for instructional programs and may also include developmental bilingual Family English literacy, and bilingual preschool, and gifted and talented programs.

The House recedes.

18. The House bill, but not the Senate amendment, specifies that 25 percent of the new funds remaining after cost-of-living increases must be reserved for transitional bilingual education and developmental bilingual education. Of this amount, \$1 million will be reserved for developmental bilingual education programs in FY 1988 (to increase by \$150,000 each year), and any remaining amount will be reserved for transitional bilingual education programs.

The House recedes.

19. The Senate amendment, but not the House bill, includes language throughout the section on "definition; regulations" which indicates "as further defined or determined by the Secretary by regulation".

The Senate recedes. The Department of Education's 1986 regulations narrowed the definition of "limited English proficiency", especially as it applies to American Indian and Alaskan Natives "who come from environments where a language other than English has had a significant impact on their level of English language proficiency". At least one Title VII project serving American Indian students has been terminated because of the overly-restrictive regulations.

20. The Senate amendment, but not the House bill, includes difficulty to speak, read, write, or understand English as part of the definition of all limited proficiency, whereas the House bill only applies this clarification to American Indian and Alaska Natives.

The Senate recedes with an amendment (correcting printing error) starting with line 9 "and who" is not indented, through line 15.

21. The Senate amendment refers to section 1005(c)(2)(A) while the House bill refers to section 1005(c)(2).

The Senate recedes.

22. The House bill, but not the Senate amendment, contains language which indicates that family English literacy programs may include instruction designed to enable aliens who are otherwise eligible for temporary resident status under section 245A of the Immigration and Nationality Act to achieve a minimal understanding of ordinary English and a knowledge and understanding of history and government of the United States.

The Senate recedes.

23. The House bill, but not the Senate amendment, includes in its definition of "programs of academic excellence" a specification that such programs be used as models for effective schools "for LEP students" to facilitate the dissemination and use of effective teaching practices for LEP students.

The House recedes with an amendment to combine both Senate and House language.

24. The Senate amendment, but not the House bill, includes in its definition of programs of academic excellence a specification that such programs be designed to serve as models of exemplary bilingual education programs and to facilitate the dissemination of effective bilingual education practices.

The House recedes.

25. The House bill refers to Section 306(a)(11) of the Adult Education Act whereas the Senate amendment refers to section 306(b)(11).

The House recedes.

26. The House bill, but not the Senate amendment, expands the current prohibition against the redefinition through regulation of certain terms defined in the Act to cover all the terms defined in the Act.

The Senate recedes.

27. The Senate amendment, but not the House bill, prohibits further definition only of terms defined in paragraphs (4), (5), (6), (7), and (8) of subsection (a).

The Senate recedes.

28. The Senate amendment, but not the House bill, in its special information rule section includes the phrase "to the extent practicable", the information provided to parents shall be in a language and form the parents understand.

The House recedes with an amendment deleting "to the extent practicable" and inserting "Every effort shall be made to provide", striking "provided" and "shall be".

29. The House bill, but not the Senate amendment, includes with its bilingual education programs, language which indicates that programs may use available funds to provide technology-based instruction to students in order to enhance the program.

The Senate recedes.

30. The Senate amendment, but not the House bill, includes among its bilingual education programs, programs to develop instructional materials in languages for which such materials are commercially unavailable.

The Senate recedes.

31. The Senate amendment, but not the House bill, requires that grant applications for programs of transitional bilingual education, developmental bilingual education, special alternative instructional programs or programs of academic excellence include participation by a LEA.

The Senate recedes.

32. The House bill, but not the Senate amendment, permits grant applications for programs of academic excellence, family English literacy, and bilingual preschool, special education, and gifted and talented to

be submitted separately or jointly by eligible recipients.

The Senate recedes.

33. The House bill, but not the Senate amendment, extends applicant eligibility for programs of academic excellence grants to those entitled eligible for family English literacy, bilingual preschool, special education, and gifted and talented programs.

The Senate recedes.

34. The House bill uses the word "considers" and labels the title of the subparagraph as "Content of Application".

The Senate amendment, uses the word "deems" and labels the subparagraph as "Manner of Filing and Contents of Application".

The Senate recedes.

35. The House bill, but not the Senate amendment, in its application requirements includes language which specifies "rates of referral to or placement in special education programs".

The House recedes.

36. The House bill, but not the Senate amendment, specifies that applications must contain information on how training of educational personnel and parents would be undertaken.

The Senate recedes.

37. The House bill, but not the Senate amendment, permits applicants who desire to obtain priority in the awarding of grants to include in the application information which shows: (a) the administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language; (b) the unavailability of personnel qualified to provide bilingual instructional services; (c) the applicant's current or past efforts to establish a bilingual education program.

The Senate recedes with an amendment which requires that priority in the awarding of grants for special alternative instructional programs be given to applications which show: (a) the administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language; (b) the unavailability of personnel qualified to provide bilingual instructional services; or (c) the presence of a small number of students in the schools and the applicant's inability to obtain native language teachers because of isolation or regional location.

38. The Senate amendment, but not the House bill, indicates that an application will receive priority if it is made on behalf of: (a) a local educational agency having schools in which many languages are represented; (b) a local educational agency that does not have personnel qualified to provide bilingual instructional services; and (c) a local educational agency having a small number of students in the schools that because of isolation or regional location is unable to obtain native language teachers.

The House recedes with an amendment which requires that priority in the awarding of grants for special alternative instructional programs be given to applications which show: (a) the administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language; (b) the unavailability of personnel qualified to provide bilingual instructional services; or (c) the presence of a small number of students in the schools and the applicant's inability to obtain native language teachers because of isolation or regional location.

39. The House bill, but not the Senate amendment, contains language which specifies that applications for programs of academic excellence contain information re-

garding "rates of referral to or placement in special education programs."

The House recedes.

40. The House bill contains language which specifies that during the first 12 months of the grant an applicant may engage exclusively in pre-service activities.

The Senate amendment requires that during the first six months of a grant an applicant shall engage exclusively in pre-service activities.

The Senate recedes.

41. The House bill has as its subtitle, "Grant Limitations". The Senate amendment has as its subtitle, "Duration of Grants".

The Senate recedes.

42. The Senate amendment, but not the House bill, indicates that preservice activities may include materials development only where such materials are commercially unavailable.

The Senate recedes.

43. The Senate amendment, but not the House bill, also specifies that pre-service activities may be waived by the Secretary upon a determination that an applicant is prepared to operate successfully the proposed instructional programs.

The Senate recedes.

44. The Senate amendment, but not the House bill, includes a phrase that information be provided to parents in a language and form the parents understand "to extent practicable".

The House recedes with an amendment eliminating the phrase "To the extent practicable" and inserting "every effort shall be made to provide" and striking "provided" and "shall be".

45. The Senate amendment, but not the House bill, specifies that grants may be made for a period of one to three years for bilingual preschool, special education, gifted and talented, and programs to develop instructional materials.

The Senate recedes.

46. The House bill, but not the Senate amendment, changes the duration of grants for bilingual preschool, special education, and gifted and talented programs from one-three years to a fixed three-year period.

The Senate recedes.

47. The Senate amendment, but not the House bill, provides that students may not participate in a Federal bilingual education program for more than three years if a separate state or local program exists. If no such program exists, an individual student may continue in a Federal program for an additional year if school personnel determine that the individual's failure to master English is impeding his or her academic progress or ability to meet grade promotion or graduation standards, and if handicapped, his or her IEP objective. After a fourth year, a student must be reevaluated in order to remain in a Federal program for a fifth year. In addition, when the student is to be retained for the additional year or years in the program, the evaluation must include plans for concentrating on the goal of enhancing the student's competency in English. No student may continue in a Federal program for more than five years.

The House recedes with an amendment striking "only Federal funds are available for bilingual education, and"; striking "failure to master English"; and inserting "lack of English proficiency"; striking "bilingual"; striking "bilingual education"; striking "failure to master English"; and inserting "English language development"; striking "a bilingual program" striking "failure to master English"; and inserting "the".

48. The Senate amendment, but not the House bill, provides that instruction may be intensified through expanding the educa-

tional calendar year, lowering per pupil ratios and applying technology.

The House recedes with an amendment clarifying that this provision applies to both regular and supplementary programs by inserting following "throughout the" the words "regular and any supplementary".

49. The House bill entitles subparagraph "Application Requirements" and denotes subsections "(a) (1), (2), and (3)".

The Senate amendment entitles subparagraph "Consultation Required" and denotes subsections "(a)(1), (a)(2), and (a)(3)".

The Senate recedes.

50. The House bill, but not the Senate amendment, includes a provision which ensures applicant support for additional advisory council activities, if support is requested by the advisory council.

The Senate recedes with an amendment to include subparagraph (4) of the Senate amendment.

51. The House bill, but not the Senate amendment, specifies that the personnel training provided will assist personnel in meeting State and local certification requirements.

The Senate recedes.

52. The Senate amendment, but not the House bill, limits the requirements that LEAs prove ability to provide services and activities within the State to transitional, developmental and alternative programs.

The Senate recedes.

53. The Senate amendment, but not the House bill, specifies that applications contain a provision which indicates that student evaluation and assessment procedures in the program are appropriate for LEP students and that LEP students are handicapped and are identified and served in accordance with the requirements of the Education of the Handicapped Act.

The House recedes.

54. The House bill uses the subtitle, "Priority Consideration of Grants".

The Senate amendment uses the subtitle, "General Priority Rule".

The Senate recedes.

55. The House bill uses the subtitle, "Priority for Programs Serving Underserved Children".

The Senate amendment uses the subtitle, "Special Priority Rules".

The Senate recedes.

56. The Senate amendment, but not the House bill, contains a provision which indicates that no action taken may involve the assignment of students to any federally-assisted education program merely on the basis of the surname of such students.

The House recedes with an amendment that assignment to or exclusion from any federally-assisted education program should not be made on the basis of surname.

57. The House bill uses the subtitle, "Bypass Provision".

The Senate amendment uses the subtitle, "Nonprofit Private School Rule".

The Senate recedes.

58. The Senate amendment, but not the House bill, contains a U.S.C. cite for the Johnson-O'Malley Act: (25 U.S.C. 452 et seq.).

The House recedes.

59. The House bill indicates that the amount paid by the Secretary to any State educational agency for the proper and efficient conduct of the State program for any fiscal year shall not be less than \$75,000 nor greater than 8% of the aggregate of the amounts paid in the preceding fiscal year under Section 7021.

The Senate recedes.

60. The Senate bill specifies that the amount paid by the Secretary to any State educational agency shall not be less than

\$50,000 nor greater than 5% of the aggregate of the amounts paid in the preceding fiscal year under Section 7021.

The Senate recedes.

61. The House bill, but not the Senate amendment, includes a provision which specifies that regulations will be developed by the director in consultation with State directors of bilingual education programs, the evaluation assistance centers authorized in Section 7034 and individuals and organizations with expertise in testing and evaluation of educational programs for LEP children.

The Senate recedes.

62. The House bill, but not the Senate amendment, includes, "referral to or placement in special education classes" in its program evaluation requirements.

The House recedes.

63. The Senate amendment, but not the House bill, includes a provision which indicates that regulations providing for information and data collection include specific activities undertaken to improve pre-referral, evaluation procedures, and instructional programs for LEP children who may be handicapped or gifted and talented.

The House recedes.

64. The Senate amendment, but not the House bill, includes language which specifies that in carrying out the provisions of this section, regulations which are promulgated prior to the date of enactment of this act may be reissued if the regulations substantially comply with the provisions of this section.

The Senate recedes.

65. The House bill, but not the Senate amendment, includes language which indicates that longitudinal studies on the impact of bilingual education programs on LEP students shall use a nationally representative sample of the programs funded under this title and provide information including data on grade retention, academic performance, and dropout rates.

The Senate recedes.

66. The House bill, but not the Senate amendment, includes in its research activities, language which indicates that the clearinghouse should coordinate its activities with the National Diffusion Network (NDN).

The Senate recedes.

67. The Senate amendment, but not the House bill, includes in its research activities: (1) studies to determine effective and reliable techniques for providing bilingual education to handicapped students; and (2) studies to determine effective and reliable methods of identifying gifted and talented students who have language proficiencies other than English.

The House recedes.

68. The House bill, but not the Senate amendment, provides that the Secretary shall also consult with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.

The Senate recedes.

69. The House bill, but not the Senate amendment, provides that nothing in this title shall be construed as authorizing the Secretary to conduct or support studies or analyses of the content of educational textbooks.

The Senate recedes.

70. The House bill, but not the Senate amendment, specifies that the Assistant Secretary for Educational Research and Improvement shall also consult with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives to ensure that research activities undertaken complement and do not duplicate

the appropriate activities as specified in GEPA.

The Senate recedes.

71. The Senate amendment, but not the House bill uses the term "available" in the title of subsection (b).

The House bill, but not the Senate amendment, uses the word "National" in the second line of subsection (b).

The Senate recedes.

72. The House bill, but not the Senate amendment, instructs the Center for Education Statistics to utilize data collected on limited English proficient persons by other Federal education agencies.

The Senate recedes.

73. The Senate amendment, but not the House bill, provides that funds may be used for training programs which emphasize opportunities for career development, advancement, and lateral mobility, and may include training for parents.

The House recedes.

74. The Senate amendment, but not the House bill, provides that a grant or contract may be made for the provision of in-service training and technical assistance upon application of: (a) institutions of higher education (including junior colleges and community colleges), (b) private-for-profit or non-profit organizations, or (c) a State educational agency.

The House recedes.

75. The House bill, but not the Senate amendment, provides that grants or contracts for pre-service or in-service training activities shall be developed in consultation with an advisory council composed of representatives of State and local educational agencies within the applicant's service area or geographic region for operating programs of bilingual education or special alternative instruction for LEP students.

The Senate recedes.

76. The Senate amendment, but not the House bill, specifies that an application for a grant or a contract for pre-service or in-service training activities shall be considered an application for a program of bilingual education for the purposes of the consultation requirements section: (1) consultation with an advisory council of which a majority shall be parents and other representatives of the children to be served in the program, (2) be accompanied by documentation of the consultation and by the comments which the council makes on the application, (3) contain assurances that, after the application has been approved, the applicant will provide for the continuing consultation with, and participation by, the committee of parents, teachers, and other interested individuals \* \* \*, and (4) include evidence that the State educational agency has been notified of the application and has been given the opportunity to offer recommendations to the applicant and to the Secretary.

The Senate recedes.

77. The House bill, but not the Senate amendment, contains a provision which indicates that pre-service or in-service training programs shall assist education personnel in meeting State and local certification requirements, and whenever possible, should award college or university credit.

The Senate recedes.

78. The House bill, but not the Senate amendment, contains language which indicates that for fiscal year 1988, and each of the five subsequent fiscal years, not less than 500 fellowships shall be awarded. \* \* \*

The Senate amendment, but not the House bill, indicates that for the fiscal year ending September 30, 1989, not less than 500 fellowship shall be awarded. . . .

The Senate recedes with an amendment changing "1988" to "1989".

79. The House bill, but not the Senate amendment, clarifies that fellowships leading to a graduate degree means fellowships leading to a masters or doctorate degree.

The Senate recedes.

80. The House bill, but not the Senate amendment, contains language which indicates that the director shall prepare, and not later than February 1 of each year, submit to Congress and the President a report on the grants and contracts made in the preceding fiscal year and the number of individuals benefiting from the programs assisted under this title.

The Senate recedes.

81. The House bill, but not the Senate amendment indicates that a report by the Secretary shall be submitted to the Congress and the President no later than February 1, 1988, 1990, 1992, and 1994.

The Senate recedes.

82. The Senate amendment, but not the House bill, indicates that the Secretary shall submit a report to Congress not later than February 1, 1992.

The House recedes.

83. The House bill, but not the Senate amendment, contains language which indicates that a plan including cost estimates should be carried out during the five-year period beginning on such date for extending programs of bilingual education, bilingual vocational and adult education programs to all such pre-school and elementary school-children of limited English proficiency, including a phased plan for the training of the necessary teachers and other education personnel necessary for such purposes.

The Senate recedes.

84. The House bill, but not the Senate amendment, contains language which specifies that a report should be submitted on an evaluation of the activities carried out during the preceding two fiscal years.

The Senate recedes with an amendment to include this information in the Director's report.

85. The House bill, but not the Senate amendment, includes a provision which indicates that a report on the research activities should be carried out during the preceding two fiscal years and include the major findings of research studies.

The Senate recedes with an amendment to fold this information into the Director's report.

86. The House bill, but not the Senate amendment, includes language which indicates that for the purposes of reading and scoring applications for competitive grants authorized under Parts A and C, the Secretary shall use persons who are not employed by the Federal government and who are experienced and involved in the educational programs similar to those assisted under Parts A and C. Further, the Secretary shall solicit nominations for application readers from State directors of bilingual education and may use funds appropriated for Parts A and C to pay for the applicant's reading and scoring services.

The Senate recedes.

87. The House bill, but not the Senate amendment, provides that the Secretary shall not impose restrictions on the availability of uses of funds authorized other than those set out in this title or other applicable Federal statutes and regulations.

The Senate recedes.

88. The House bill, but not the Senate amendment, repeals Title VII of the Elementary and Secondary Education Act of 1965.

The Senate recedes.

89. The House bill, but not the Senate amendment, specifies that this title shall not apply to grants and contracts entered

into under the Bilingual Education Act before the effective date of this title.

The Senate recedes.

90. The Senate amendment, but not the House bill, provides a sense of the Senate that any State which requires a written authorization from parents of students wishing to enroll in bilingual programs should provide a specific opportunity on any form prepared for this purpose for the parent to express either approval or disapproval of such enrollment.

The Senate recedes.

**TITLE II OTHER PROGRAMS—IMPACT AID**

1. The Senate amendment, but not the House bill updates definitions to reflect the reaction of the Department of Education and the Name of the Committee on Labor and Human resources.

The House recedes with an amendment striking "1987" and inserting "1988".

2. The Senate amendment, but not the House bill, requires secretarial decisions on applications within 90 days of filing.

The House recedes.

3. Both the House bill and the Senate amendment reauthorizes the program through 1993. However, the House bill replaces "1988" with "1993" in Section 3(d)(2)(E)(ii), whereas the Senate amendment establishes new entitlement levels for "b" payments at 25% of the local contribution rate (LCR).

The House recedes.

4. The House bill authorizes a ceiling of \$735 million for P.L. 81-874 for FY 1988.

The Senate amendment authorizes \$821 million for FY 1989, \$865 million for FY 1990, \$905 million for FY 1991, \$950 million for FY 1992, and \$995 million for FY 1993.

The House recedes with an amendment authorizing \$735 million for FY 1989, \$785 million for FY 1990, \$835 million for FY 1991, \$885 million for 1992, and \$935 million for 1993.

5. The Senate amendment, but not the House bill clarifies that when determining Section 2 payments the Secretary must apply the current levied real property tax rate to the current annually determined aggregate assessed value.

The House recedes.

6. The Senate amendment, but not the House bill, establishes entitlement levels at 100% of the Local Contribution Rate times the number of 3(a) children in that district and 25% of the Local Contribution Rate times the number of 3(b) children in that district.

The House recedes.

7. The Senate amendment, but not the House bill, specifies that to be considered an eligible district under 3(d)(2)(B), a district must be unable to provide a level of education equivalent to the state average or that of three or more comparable districts.

The House recedes.

8. (a) The Senate amendment, but not the House bill, specifies that the amount of the supplement for such districts shall be adequate to provide the district with a level of education equivalent to the greater of either the state average or that of comparable districts in the state.

The House recedes with an amendment clarifying that the choice between comparable school districts or State average must parallel the choice made under the previous paragraph.

(b) The Senate amendment, but not the House bill, further specifies that the Secretary shall insure that these special districts make a "reasonable tax effort" and that these districts' tax rates are no lower than 80% of the state average. Coterminous mil-

tary districts will be determined to have met this requirement.

The House recedes with a technical amendment.

(c) The Senate amendment, but not the House bill, further requires that when determining the amounts of money such a district has available, the Secretary shall not take into consideration any cash balances from the previous year allowable under state law, or if no such law exists, ineligibility must only be established where cash balance is greater than 30%.

The House recedes.

9. (a) The Senate amendment, but not the House bill, amends Section 3(d)(3)(B)(ii)—Districts with unusual Geographic Factors—to require the Secretary to make payments to any LEA which qualifies under the terms of such section. Previously, the Secretary was only authorized to take such action.

The House recedes.

(b) The Senate amendment further clarifies that the supplement for such districts is meant for the portion of federally connected children in that district rather than for all children in the district.

The House recedes.

10. The Senate amendment, but not the House bill, provides that the Local Contribution Rate (LCR) for coterminous agencies shall not be less than 70% of the average per pupil expenditure in all states.

The Senate recedes with an amendment which specifies that the Local Contribution Rate (LCR) for coterminous agencies shall be the lesser of 70% of the average per pupil expenditure in all States or the amount necessary to raise that agency to its State average. This provision does not apply to any coterminous agency within a State whose equalization laws would prevent the district from receiving the additional funding provided by this measure or who would reduce their State aid in proportion to the increase in Federal dollars.

11. The Senate amendment, but not the House bill, allows for payments to be rounded to the nearest whole dollar. It further provides for the Secretary to return to the United States Treasury any funds recovered from LEAs because of overpayments or unallowable expenses that were made at least 5 years earlier. Under current law, the Secretary must continue to redistribute such funds for the appropriate award year no matter how long ago that may have been.

The House recedes.

12. (a) The Senate amendment, but not the House bill, provides for a preliminary payment based on the preceding fiscal year of 75% for "A" children.

The House recedes.

(b) The Senate amendment further specifies that all other preliminary payments for eligible LEAs be at 50% of the amount received for the preceding fiscal year.

The House recedes.

13. The Senate amendments, but not the House bill, states that when making payments, the Secretary must first pay to each LEA serving handicapped children full entitlement for such children as well as 100% of the entitlement for Section 2 districts. Next, Section 3(d)(2)(B) districts are to receive 100% of their 3(a) and 3(b) entitlements. Of the funds remaining, 80% is to be reserved for "A" children and 20% for "B" children. Coterminous districts are then to be paid 100% of their entitlement.

The House recedes with an amendment to require that the preliminary payment for handicapped children applies only to the special supplement and not the entire entitlement.

14. The Senate amendment, but not the House bill, distributes funds according to the following formulas:

	Percentage of entitlement		
	Step 1	Step 2	Step 3
Percentage of "A" children in district:			
20-100 percent (Super As)	80	20	0
15-19.9 percent (Sub-Super As)	60	15	25
0-14.9 percent (Regular As)	40	10	50

If there is not enough money available to fully fund any of the above steps, Super As are to receive 72% of available funds for that step, Sub-Super As 3%, and Regular As 25%.

	Percentage of entitlement		
	Step 1	Step 2	Step 3
Percentage of "B" children in district:			
20-100 percent (Super Bs)	20	30	50
0-19.9 percent (Regular Bs)	10	5	85

If there is not enough money available to fully fund any of the above steps, Super Bs are to receive 75% of available funds for that step, and regular Bs 25% of available funds.

The House recedes with an amendment clarifying that payments are to be pro rata reduced for any step that is not fully funded.

15. The Senate amendment, but not the House bill, prohibits equalization states from considering the special supplement for handicapped or Indian children, or the 3(d)(2)(B) and 3(d)(2)(C) supplements in their equalization formulas.

The House recedes with a technical amendment.

Some concerns have been raised that the conferees' action with respect to limiting the State authority to equalize the additional funds provided on behalf of Indian and handicapped students might be misinterpreted. The conferees wish to make clear that the amendment does not, in any way, make these funds categorical nor does it limit the local education agency's authority to put these funds in a general fund and expend them for basic support. This amendment relates to treatment of these funds within the context of a State aid system and does not affect the basic nature of impact aid.

16. The Senate amendment, but not the House bill, holds harmless all districts receiving 3(a) and Super B payments at their 1987 per pupil expenditure classifications. If sums are insufficient to pay this amount in full, then this amount shall be ratably reduced.

The House recedes with an amendment clarifying that the total hold harmless payment for a district shall not exceed those received in 1987.

17. The Senate amendment, but not the House bill, permits the DOD to use its Sec. 6 funds to provide additional payments to schools receiving Section 3 funds.

The House recedes.

18. The Senate amendment, but not the House bill, puts into law, current practice by updating the thresholds of eligibility for disaster assistance. Current law allows Disaster Assistance funds to be provided in cases in which damage is at least \$1,000 or one-half of 1% of an agency's current operating expenses. This section would update those figures to \$10,000 or 5 per centum. The amendment also provides that funds available under this section will be available for Section 16 (School Construction in Cases of Certain Disasters) of P.L. 81-815.

The House recedes.

19. The Senate amendment, but not the House bill, permits districts to receive pay-

ments for fiscal years prior to FY 1989, for any student residing in Section 8 Housing provided the District previously received payments for that student and such student.

The Senate amendment further specifies that payments made prior to FY 1989 for Section 8 housing students shall stand.

The House recedes.

20. The Senate amendment, but not the House bill, provides for a 90-day comment period prior to the publication of new regulations and specifies that these regulations may only take effect in the fiscal year following final publication. The Senate amendment also prohibits regulations from having a retroactive effect which results in the recovery of money.

The House recedes with an amendment.

The conferees intend that the provisions of this title will take effect on the effective date of this act even if the Secretary's regulations are delayed.

21. The Senate amendment, but not the House bill, includes a technical amendment to update reference to the Robert T. Stafford Elementary and Secondary Education Improvement Act of 1987.

House recedes with a technical amendment clarifying the section reference.

22. The Senate amendment, but not the House bill, prohibits districts from having to repay monies received under Section 2(a)(1)(C) because of an incorrect determination.

The Senate recedes with the following provision from the House of Representatives:

It is the expressed intent of the conferees that the language of P.L. 100-202 contained in title III—Department of Education appropriations regarding limitations on recoupment of incorrect payments under section 2(a)(1)(C) of the Impact Aid law be interpreted to include any Impact Aid overpayments to the Valle Lindo School District of South El Monte, California which were due to computational errors made by the Department in determining the amount of that district's Section 2 entitlements.

23. The House bill, but not the Senate amendment, corrects a provision in current law where non-Indian parents who reside on nontaxable land are being forced to pay tuition and to send their children to schools where they are employed or schools that exist within the community.

The House bill provides for the payment of tuition for non-Indian students who attend these schools and live on nontaxable land.

The Senate recedes.

24. The House bill, but not the Senate amendment, authorizes a ceiling of \$24 million for FY 1988 for P.L. 81-815.

The Senate amendment authorizes \$25 million for FY 1989, \$26 million for FY 1990, \$27 million for FY 1991, \$28 million for FY 1992, and \$29 million for FY 1993.

The House recedes.

25. The Senate amendment, but not the House bill, updates definitions to reflect the creation of the Department of Education.

The House recedes.

26. The Senate amendment, but not the House bill, permits the Secretary to use funds to maintain and repair facilities whenever the Secretary holds title to school facilities that continue to be used by the Federal Government, or by another Federal entity by permit from the Federal Government, for the provision of free public education.

The Senate recedes.

27. The House bill, but not the Senate amendment, requires that secretarial decisions be made regarding applications within 90 days of filing such application.

The House recedes.

28. The Senate amendment, but not the House bill, puts into law two provisions which are current practice. First, it restricts use of disaster funds under this Act to those areas declared by the President to be national disaster areas. Second, it limits these funds to cases in which damage is at least \$10,000 or 5 per centum of an agency's current operating expenses.

The House recedes.

29. The Senate amendment, but not the House bill, authorizes the Comptroller General to study the effectiveness of the system used to award funds under P.L. 81-815.

The House recedes.

30. The House bill, but not the Senate amendment, extends the section on "Definitions" in regard to the "base year" by striking 1988-1989.

The Senate recedes.

#### TITLE II—ADULT AND VOCATIONAL EDUCATION

1. *Adult/Vocational Education.* The House bill, but not the Senate amendment, rewrites the purpose of the Adult Education Act to clarify that adults to be served are those who lack sufficient literacy skills requisite to effective citizenship and productive employment. In addition, the House bill, but not the Senate amendment, adds a definition of an "educationally disadvantaged adult".

The Senate recedes.

2. a. The House bill, but not the Senate amendment, expands the definition of an adult who is eligible to receive services.

The Senate recedes.

b. The House bill amends the definition of adult education to include individuals who lack mastery of basic skills or who have not graduated from secondary school.

The Senate recedes.

c. The Senate amendment amends the definition of adult education to include individuals who are not enrolled in secondary school.

The House recedes.

3. The House bill, but not the Senate amendment, changes the definition of an "institution of higher education" to be defined the same as the definition for "institution of higher education" in section 120(a) of the Higher Education Act of 1965.

The House recedes.

4. The House bill reauthorizes the Adult Education Act at \$200 million for FY 1988 and such sums as may be necessary for each fiscal year 1989 through 1993, whereas the Senate amendment provides for a reauthorization of \$300 million for FY 1989, \$210 million for FY 1990, \$225 million for FY 1991, \$235 million for FY 1992, and \$245 million for FY 1993.

The Senate recedes with an amendment authorizing \$200 million for FY 1989 and such sums through 1993.

5. The House bill, but not the Senate amendment, amends the formula for distribution by limiting allotments to the Outlying Areas to \$100,000 each, and distributing the remainder of the funds among the States, including the District of Columbia and Puerto Rico which receives \$250,000.

The Senate recedes.

6. The House bill, but not the Senate amendment, amends the current formula to distribute funds among the States according to the number of adults who are not currently enrolled or are not required to be enrolled in school.

The House recedes.

7. The House bill, but not the Senate amendment, amends the current formula to hold States harmless to the amounts the State received for fiscal year 1987.

The House recedes.

8. The House bill lowers the trigger for national programs from \$112 million to \$108 million, and reduces the setaside from 5 percent to 3 percent. The Senate amendment authorizes \$2 million in each fiscal year for national programs.

The Senate recedes with an amendment requiring that the reservation for national programs cannot exceed \$3 million in any one fiscal year.

9. The House bill, but not the Senate amendment, amends current law to require that for-profit entities are eligible to participate only as a member of a consortium, provided that they could make a significant contribution to adult education activities. In addition, the House bill, but not the Senate amendment, adds additional information requirements for the local applications, and gives priority among local applications to programs that serve educationally disadvantaged adults.

The Senate recedes with an amendment that the preference in funding for those local applications for programs that serve educationally disadvantaged adults only applies to funding in excess of the fiscal 1988 appropriations.

10. The Senate amendment, but not the House bill, amends the current setaside for the institutionalized by requiring that not less than 10 percent of each State grant must be used for corrections education and education for institutionalized individuals. In addition, the Senate amendment, but not the House bill, defines the programs, eligible population and services that may be provided as part of corrections education.

The House recedes.

11. The Senate bill authorizes an additional program for workplace literacy partnership grants with a \$50 million trigger, at an authorization level of \$30 million for FY 1988, \$31.5 million for FY 1989, and such sums as may be necessary for fiscal years 1990 through 1993.

The House recedes.

12. The House bill permits States to use up to 10% of their State grant for literacy programs for current employees.

The House recedes with an amendment to make mandatory that once appropriations for workplace literacy reach \$50 million, the Federal share of the cost of workplace literacy programs which teach literacy skills needed in the workplace would be provided to States.

13. The House bill, but not the Senate amendment, places a cap of 5% on local administrative costs.

The Senate recedes.

14. The House bill, but not the Senate amendment, reorganizes the responsibilities of the State in administering the Adult Education program.

The Senate recedes.

15. The House bill, but not the Senate amendment, adds language to require the State to identify any State rule or policy regarding administration of an Adult Education program as a State-imposed requirement.

The Senate recedes.

16. The House bill places a \$50,000 or 5% cap on State administrative costs effective at the date of enactment.

The Senate amendment places a cap of the same amount/percent after September 30, 1990.

The House recedes.

17. The House bill, but not the Senate amendment, requires the State to have a State Advisory Council with membership representative of specific types of persons and outlines certification procedures, terms of appointment and duties.

The Senate recedes with an amendment making the creation of the State advisory council permissive and fiscally supported out of State administrative funds.

18. The House bill, but not the State amendment, amends current law to require the State to submit an application and a State plan every four years, expands the information which shall be included in the State plan and mandates the process by which the State plan shall be developed.

The Senate recedes with an amendment changing "1988" to "1989".

19. The Senate amendment, but not the House bill, clarifies State plan requirements regarding adult education programs for persons with limited English proficiency, and specifically permits such programs to be conducted in the native language if necessary.

The House recedes.

20. The House bill, but not the Senate amendment, provides procedures for amending State plans.

The Senate recedes.

21. The Senate amendment, but not the House bill, provides procedures for amending State plans approved between July 1, 1985, and June 30, 1988.

The House recedes.

22. The House bill, but not the Senate amendment, requires each State to evaluate the program of its local grant recipients, and outlines procedures for evaluations.

The Senate recedes with an amendment:

(a) to require an annual submission of data from local applicants;

(b) to require the evaluation of one-third of the applicants within the four years of the State plan;

(c) these evaluations should consider certain factors listed in the House provisions.

23. The House bill, but not the Senate amendment, amends current law to specify application information for experimental projects and teacher training.

The Senate recedes.

24. The House bill amends current law to permit 90% in FY 1988, 87% in FY 1989, 83% in FY 1990, and 80% in FY 1991 through FY 1993 for the Federal share of expenditures to carry out a State plan.

The Senate amendment reduces the Federal share to 75% for each fiscal year beginning in 1989.

The House recedes with an amendment on Federal matching: 90% in 1989, 85% in 1990, 80% in 1991, and 75% in 1992.

25. The House bill amends current law to add an additional requirement that Federal funds must supplement non-Federal funds, and cannot be used to supplant State and local funds, whereas the Senate bill amends the maintenance of effort provisions to require that states maintain not less than 90% of current fiscal effort per student.

The Senate recedes with an amendment measuring maintenance of effort in the second preceding fiscal year. The Senate also recedes in terms of requiring a 100 percent maintenance of effort.

26. The House bill, but not the Senate amendment, requires the Secretary to make grants out of funds for national programs to support activities which meet the special needs of migrant farmworkers and immigrants.

The Senate recedes with an amendment to include migrant programs as the first priority in funding.

27. The House bill, but not the Senate amendment, requires the Secretary, out of funds available for national programs, to assist states in evaluating adult education programs.

The Senate recedes with an amendment making a technical change and making eval-

uation and research a third priority in funding.

28. The House bill, but not the Senate amendment, requires the Secretary, out of funds available for national programs, to determine the criteria for defining illiteracy within 2 years, to report on the status of adult illiteracy every 4 years, and submit a report every 3 years on results of program evaluations.

The Senate recedes.

29. The House bill, but not the Senate amendment, requires the Secretary to make grants for adult literacy volunteer training programs.

The Senate recedes with an amendment making a technical change and making programs for adult volunteers a second priority in funding.

30. The House bill, but not the Senate amendment, requires the Secretary to conduct a study of Federal funding sources for and services for adult education programs, including literacy services, in conjunction with the Departments of Labor and HHS.

The House recedes with an amendment to include the joint study of Federal adult education services in the studies section (Title VI, Part C).

31. The House bill, but not the Senate amendment, requires the Secretary to establish a national clearinghouse of literacy services for adults, and to carry out research programs on the special needs of individuals in need of adult education, including those with learning disabilities.

The Senate recedes with an amendment requiring the national clearinghouse to be funded by the Office of Educational Research and Improvement (OERI).

32. The House bill, but not the Senate amendment, amends the authorization for adult education for Indians to \$8 million for FY 1988 and such sums as may be necessary for each of fiscal years 1989 through 1993.

The House recedes.

33. The House bill extends the National Advisory Council on Adult Education; the Senate amendment abolishes the Council.

The House recedes.

34. The Senate amendment, but not the House bill, deletes language in the state plan with respect to bilingual education to conform with the reauthorization of bilingual education under Title VII of this Act.

The House recedes.

35. The Senate amendment, but not the House bill, authorizes an additional program to provide English Literacy Program Grants to provide literacy instruction for limited English proficient adults. The authorization is \$25 million for fiscal year 1988, \$26.3 million for FY 1989, \$27.6 million for FY 1990, \$29 million for FY 1991, \$30.5 million for FY 1992, and \$32 million for FY 1993.

The House recedes with an amendment permitting 5% of the grant to be used for state administration, technical assistance, and training.

36. a. The Senate amendment, but not the House bill, amends the distribution formula in the Stewart B. McKinney Homeless Assistance Act to require states to estimate the number and the percent of homeless adults.

b. The Senate amendment further permits the Secretary to make discretionary grants to states for literacy instruction for the homeless.

36. (a) The House recedes.

(b) The House recedes.

37. The Senate amendment, but not the House bill, amends the Carl D. Perkins Vocational Education Act to clarify that single pregnant women including teenagers are eligible for services under the displaced homemaker setaside.

The House recedes with an amendment clarifying that single pregnant women are eligible for participation in vocational education programs.

38. The Senate amendment, but not the House bill, directs the Secretary to cease action regarding the grant procurement process for the National Center for Research in Vocational Education until the GAO has completed a review of this procedure.

The House recedes with an amendment authorizing \$2 million for the Ohio State University and \$2 million for the University of California at Berkeley to support ongoing activities through December 31, 1988, and providing that such amount shall be deducted from the total award made for a National Center for the 1988 grant award year. This provision is to take effect immediately upon enactment.

#### NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

1. The Senate amendment, but not the House bill, amends and expands the scope of the National Assessment for Educational Progress to: report every two years on reading and mathematics, every four years on writing and science, and every six years on history, geography, and civics. In addition, the Senate amendment expands NAEP to provide reports on a national, regional and state basis, and enables the States to participate in the NAEP assessment on a voluntary basis. The authorization is \$12.5 million for FY 1989, \$18.54 for FY 1990, \$17.9 for FY 1991, and \$19.6 for each of fiscal years 1992 and 1993.

The House recedes with an amendment limiting the expansion of the National Assessment of Educational Progress (NAEP), both in terms of subject areas and State representative sampling; placing the NAEP in the National Center for Educational Statistics, reporting to the Commissioner of Educational Statistics; requiring a comprehensive study by an independent group of the 1990 and 1992 State representative demonstration assessments; and strengthening the independence of the National Assessment Governing Board.

The Commissioner is authorized to carry out the National Assessment by grants, contracts, or cooperative agreements with qualified organizations or consortia thereof. By this language, the conferees intend that the Commissioner, with the advice of the National Assessment Governing Board, may have either a single grant, contract, or cooperative agreement or any combination of grants, contracts or cooperative agreements.

The expanded National Assessment shall assess the performance of students in reading, mathematics, science, writing, history/geography and other areas selected by the Board. The conferees strongly urge that other areas considered by the Board will include civics and economics.

The expansion of the National Assessment to collect state representative data, on a voluntary basis, is an outgrowth of current NAEP practice which lets states obtain such data if they pay the costs of collecting it. The provisions in the Hawkins-Stafford Education Amendments will build on this practice to determine whether an expanded collection of state representative NAEP data is feasible and desirable. The collection of such information will allow participating states to compare themselves to each other and to national NAEP averages. In addition, the data will let state officials monitor their state's progress on NAEP assessments over time.

The conferees wish to emphasize that the purpose of the expansion of NAEP is to pro-

vide policy makers with more and better state level information about the educational performance of their school children so that participating states might better measure the educational performance of their children. The goal is not to provide a score-card by which to rank state educational systems. Data from this assessment is not to be used to compare, rank or evaluate local schools or school districts.

The independent evaluation of the state representative data demonstrations is an important part of the changes authorized here.

If results are adjusted to take contextual factors into account, the effects of alternative adjustments should be tested. If unadjusted results are presented for groups of States classified in terms of contextual factors, alternative classifications should be assessed.

The evaluation should also explore the extent to which results are affected by decisions about the test itself. For example, how are the rankings of States altered if the weight given to various skills is changed and what skills should be given priority? Are the rankings of some States affected by the number of high-achieving students whose scores are constrained by ceiling effects?

If possible, the evaluation should also assess the extent to which results are shaped by differences in the closeness of the match between the content of the test and the curricula of the States.

The conferees intend the independent evaluation of State representative State demonstration assessments will, at a minimum, assess the extent to which differences among States in scores are meaningful and reliable, how well the States participating in the State representative sample do, in fact, constitute a representative sample of the States adequate to assess opportunities and risks in a nation-wide NAEP with state-by-state comparisons. To do so, the evaluation must assess the extent to which results are affected by a variety of extraneous factors. This shall include consideration of the representativeness of participating States in terms of regional representation, ethnic and racial composition, per capita income, curricula, and other variables that influence aggregate indicators of educational achievement, such as which students are excluded from testing (for example, handicapped students or students with limited proficiency in English).

If results are adjusted to take contextual factors into account, the effects of alternative adjustments should be tested. If unadjusted results are presented for groups of States classified in terms of contextual factors, alternative classifications should be assessed.

The report shall also assess National Assessment presentations including their effectiveness in providing educators, policy makers, and the general public with useable information and in providing readily understandable information to interpret the strengths and weaknesses of National Assessment findings. The evaluator shall analyze whether National Assessment presentations adequately present data in the context of factors which affect educational achievement including per capita income, per pupil expenditures, ethnic and racial composition and level of urbanization.

The NAEP contractor shall provide the evaluator, in a timely fashion, with the data needed for carrying out the evaluation. For example, data on the characteristics of non-participation will also be provided to the evaluator. The contractor shall also provide the evaluator with information on secure test items needed for analysis. The evalua-

tor, however, will not release secure items to the public, in print or on tape.

(a) The Senate amendment, but not the House bill, changes the name, the membership, and the responsibilities of the current Assessment Policy Committee.

The House recedes with an amendment changing the membership of the National Assessment Governing Board to be more representative of professional educators and testing experts.

Each State choosing to participate in assessments made on a State basis shall cover the cost of coordinating such assessments within the State, in addition to the cost of administering assessments at the school level. Such coordination will include technical assistance to local schools selected for the State sample, securing cooperation of schools, and scheduling tests at times convenient for sample schools, as well as monitoring the sample selection following the design and standards established for State tests.

#### FUND FOR THE IMPROVEMENT AND REFORM OF SCHOOLS AND TEACHING

2. The Senate amendment, but not the House bill, authorizes a new Fund for the Improvement and Reform of Schools and Teaching. This authorization gives the Secretary authority to make grants to SEAs, LEAs, IHEs, and nonprofit organizations to improve the performance of students and teachers. Grants may not be less than \$5,000 nor more than \$125,000. The Senate amendment further mandates the establishment of a Board to set priorities for awarding grants and to review and evaluate these grants. The authorization is \$18 million for FY 1989, \$18.9 million for FY 1990, \$19.9 million for FY 1991, \$21 million for FY 1992, and \$22 million for FY 1993.

The House recedes with an amendment to include Pride in Schools as an activity authorized under this part and to add Family-School Partnerships under this part with one-third of the total authorization for this part reserved for this function.

#### OPTIONAL TESTS FOR ACADEMIC EXCELLENCE

3. The Senate amendment, but not the House bill, reserves \$2 million out of funds made available for the National Assessment of Educational Progress in each fiscal year for the Optional Test for Academic Excellence. The Senate amendment authorizes the Secretary to approve or prepare comprehensive tests of academic excellence to identify outstanding students in the 11th grade. Such tests shall be voluntary.

The House recedes with an amendment authorizing this activity under the Secretary's fund for innovation and removing the reservation of \$2 million from the National Assessment of Educational Progress for such purpose.

#### COMPREHENSIVE CHILD DEVELOPMENT PROGRAM

1. The Senate amendment, but not the House bill, amends the Head Start Act to add an additional authorization for Comprehensive Child Development Centers. The Secretary of the Department of Health and Human Services is authorized to make grants to eligible agencies to support projects which encourage comprehensive services for infants and young children from low-income families. The authorization is \$25 million for each of the fiscal years 1989 through 1993.

The House recedes with an amendment which makes technical changes, strengthens the evaluation provision, and requires for two years a 4% increase in appropriations for Head Start over the previous year's appropriations before this new program can be funded.

The underlying premise of this section is to demonstrate that educational failure of extremely poor children can be prevented by providing intensive supportive services to the children and their families on an early, continuous and comprehensive basis.

Therefore, it is the intent of the conferees that projects funded in the first year be given priority for funding in subsequent years with an expected project life being five years.

#### SPECIAL GRANT FOR EDUCATION AND TRAINING FOR INDIVIDUALS WITH DISABILITIES

1. The Senate amendment, but not the House bill, authorizes a \$4 million grant for fiscal year 1988 to the State of Utah for the education and training of the disabled.

The House recedes with an amendment broadening and clarifying the purpose of the grant and removing a specific reference to the State of Utah.

#### TITLE III—AUDIT, NATIONAL CENTER, AND OTHER PROGRAMS

##### ENFORCEMENT UNDER THE GENERAL EDUCATION PROVISIONS ACT

1. The House bill, but not the Senate amendment, contains changes to the enforcement section of the General Education Provisions Act.

The Senate recedes.

2. The House bill creates an Office of Administrative Law Judges (ALJs) and would formalize along the lines of the Administrative Procedures Act the procedures to be used in the conduct of hearings. Judges shall be chosen pursuant to the Administrative Procedure Act with special emphasis placed on the candidates' experience in State and local educational agencies and federal education laws.

The Senate recedes with a clarifying amendment.

3. The House bill provides that the Equal Access to Justice Act shall apply to the fees and costs of the parties.

The Senate recedes.

The conferees intend that the provisions of the Equal Access to Justice Act regarding the awarding of attorney fees only to all Department proceedings, not just those before the Office of Administrative Law Judges.

4. The House bill allows the judge to order a party to produce information leading to admissible evidence through the use of deposition, interrogatories, and documents.

The Senate recedes with an amendment stipulating that the period for discovery should be 90 days, unless the judge extends the period.

5. The House bill grants judges the power to issue subpoenas.

The Senate recedes.

6. The House bill requires the Secretary to establish a process for voluntary mediation of disputes.

The Senate recedes with an amendment giving the Secretary in a mediated dispute the right to use the same criteria used by an administrative law judge to determine measure of recovery, e.g., proportionate harm to an identifiable Federal interest; consideration of mitigating circumstances; and the possibility of total "forgiveness" based on such factors.

Furthermore, the amendment adds a provision referencing Rule 408 of the Federal Rules of Evidence to be used during the proceedings. The provision bars as inadmissible offers, conduct, and statements made in compromise negotiations in the settlement or potential settlement of disputes. Finally, the amendment requires that, when mediation takes place before the Office of Administrative Law Judges, it be limited to 120 days, with extensions being granted at the mediator's discretion.

7. The House bill requires that the Department's preliminary departmental decision (PDD) establishes a prima facie case. Failure by the recipient to maintain adequate records constitutes a prima facie case. The recipient has 30 days from receipt of written notice of the PDD to file a review with the Office of Administrative Law Judges. State recipients in State-administered programs would be required to transmit a copy of the PDD to any affected subrecipient within 10 days and to consult with these subrecipients regarding the application for ALJ review. The burden of proof in proceedings before the ALJs would continue to be on the recipient. The Secretary would review the facts found by the judges on the basis of the substantial evidence test. The Department would be barred from taking a collection action pending the completion of judicial review.

The Senate recedes with an amendment placing a 90-day limit on the period between the preliminary departmental decision and a hearing (when requested), with the possibility of an extension by the ALJ for "good cause" and requiring appeals from the Office of the Administrative Law Judges be filed with the Secretary within 30 days of notice of the judge's decision.

The conferees intend that the judge shall readily grant an extension for good cause including granting extensions to facilitate mediation and as justice would warrant.

Finally, the amendment requires the Office of Administrative Law Judges to determine as "expeditiously as possible" whether to accept a case for review as meeting a prima facie case; requires that discovery be limited to 90 days, but that the judge may extend the discovery period at the judge's discretion; and requires that a petition for review of the decision of the Office of Administrative Law Judges be filed with the Secretary within 30 days of notice of the decision by the judge.

8. The House bill requires that a decision of the ALJs becomes final agency action, and ripe for judicial review under section 458 of the Act, sixty days after the recipient receives written notice of the ALJ's decision, unless the Secretary either modifies or sets aside the decision (in which case the decision becomes the final agency action when the recipient receives written notice of the Secretary's action), or remands it to the ALJs for further consideration. The Secretary would be required to publish final agency decisions in the Federal Register or another appropriate publication.

The Senate recedes.

9. The House bill raises from \$50,000 to \$200,000 the limit on the Secretary's authority to compromise a claim.

The Senate recedes with an amendment that no interest arising from a claim shall be charged during the administrative review of the preliminary departmental decision.

10. The House bill requires that the Department recover funds in an amount that is proportionate to the extent of the harm a violation caused to an identifiable Federal interest. This section would identify a number of such Federal interests. In addition, this section would identify certain mitigating circumstances which, if present, would bar the recovery of funds. These mitigating circumstances exist (1) if the violation occurred as a result of reasonable reliance on incorrect Department guidance, (2) if the violation occurred as a result of the Department's failure to reply within 90 days to a written SEA or LEA guidance request certified as lawful by the chief legal officer of the SEA, or (3) if the recipient actually and reasonably relied on a judicial decree issued to the recipient. In addition, the

Secretary would be required to disseminate responses to SEA guidance requests and periodically review written requests for guidance to determine the need for new or supplementary regulations.

The Senate recedes with an amendment making mitigating circumstances a factor to be considered by the ALJ in determining the measure of recovery rather than a complete bar to recovery, but allowing the ALJ to determine that no Federal recovery is justified because of the presence of mitigating circumstances; with an amendment requiring that in order for the 90 day response time to apply, the requesting entity must send the written request by certified letter, return confirmation of receipt requested; with a clarifying amendment stating that proportionality of harm and mitigating circumstances shall be the standard for determining the amount of recovery by all levels of review within the Department, not just the Office of Administrative Law Judges and the Office of the Secretary; and with a technical amendment.

"Written guidance" is intended to mean written guidance issued at the Office of Director level or above, addressing a specific request from a local or State educational agency regarding a policy, interpretation, or question pursuant to a Federal law, implementing regulations, or non-binding guidance issued by the Secretary. It is not intended to encompass telephone conversations, informal discussions at conferences, informational handouts provided at meetings with Department of Education staff, or written communication below the Office of Director level, unless such communication meets the requirements of section 453 (b)(2)(B).

11. The House bill provides that whenever the Secretary has reason to believe that a recipient of a grant or cooperative agreement is failing to comply substantially with any applicable requirement of law, the Secretary has the option to withhold further payments under that program, seek a cease and desist order, enter into a compliance agreement, to take any other action authorized by law.

The Senate recedes.

12. The House bill authorizes the Secretary to withhold funds from a recipient that is failing to comply substantially with an applicable requirement of law, and also establishes the procedures, including an opportunity for a hearing before the Office of Administrative Law Judges, the Secretary must follow to withhold funds. The proposed section is substantially similar to current law.

The Senate recedes.

13. The House bill authorizes the Secretary to issue a complaint against a recipient that is failing to comply substantially with an applicable requirement of law, and also establishes the procedures, including an opportunity for a hearing before the Administrative Law Judges, the Secretary must follow to withhold funds. The proposed section 455 is substantially similar to the current section 453 of the Act.

The Senate recedes.

14. The House bill allows the Secretary to suspend a withholding action pursuant to a compliance agreement entered into by the State or local educational agency with the Federal government. The compliance agreement is in effect for a specified period unless the State or local fails to comply with the agreement.

The Senate recedes.

15. The House bill provides for judicial review in the appropriate United States Court of Appeals of final agency action regarding recoveries under section 452, withholding under proposed section 455, and

cease and desist orders under section 456. The proposed section 458 is substantially similar to the current section 455 of the Act.

The Senate recedes.

16. The House bill authorizes the Secretary, whenever the Department recovers funds from a recipient because of a misuse of funds, to return up to 75 percent of the recovered funds to the recipient. The proposed section 459 is substantially similar to the current section 456 of the Act.

The Senate recedes.

17. The House bill defines the terms "recipient" and "applicable program."

The Senate recedes with a technical amendment.

18. The House bill makes these amendments effective 180 days after enactment.

The Senate recedes.

#### SINGLE STATE APPLICATION

19. *Single State Application: Family Impact.*

The House bill, but not the Senate amendment, adds to section 435 of the General Education Provisions Act a requirement that the SEA consider the impact on the family of programs contained in the single State application.

The House recedes.

#### NATIONAL CENTER FOR EDUCATION STATISTICS

20. The House bill, but not the Senate amendment, amends Section 406 of the General Education Provisions Act in several significant respects making technical changes and reauthorizing the National Center for Educational Statistics.

The Senate recedes.

21. The House bill requires that the National Center for Education Statistics be headed by a Commissioner appointed by the President, by and with the advice and consent of the Senate.

The Senate recedes with an amendment stating that the director of the Center for Education Statistics on the effective date of this Act may be the Acting Commissioner until June 21, 1991.

The conferees intend that the director for the Center shall be the Acting Commissioner until June 21, 1991, unless removed for cause.

The Senate also recedes with an amendment establishing an Associate Commissioner for Data Collection and Dissemination. The conferees intend that the Associate Commissioners will be members of the Senior Executive Service (SES) and will be selected for their expertise in the relevant areas.

The conferees are especially concerned that the Associate Commissioner for Data Collection and Dissemination be an individual knowledgeable about all levels of American Education and be able to link educators at the state, local and institutional level, the professional associations and groups representing these individuals, and the National Center for Education Statistics (NCES). The conferees also intend that this associate commissioner will take steps to increase and improve U.S. participation in international educational research and statistical activities.

The conferees have highlighted a \$9,500,000 separate authorization for the National Assessment for Educational Progress (NAEP) for fiscal year 1989 and a \$2,000,000 authorization for the State cooperative program for fiscal year 1989. The conferees intend that for the subsequent years, any increases in NAEP funding, NAEP will not be at the expense of other programs and services within the Center's purview.

22. The House bill appoints the Commissioner of Education Statistics rather than

the Assistant Secretary of Education as non-voting president of the Advisory Council on Education Statistics.

The Senate recesses.

23. The House bill empowers the Commissioners of Education Statistics to enter into contracts or other financial arrangements to carry out activities authorized under Section 406.

The Senate recesses.

24. The House bill requires that the Center conduct an annual national survey of dropout and retention rates as an education indicator and report such information annually to Congress.

The Senate recesses.

25. The House bill requires a national study of financial aid pursuant to the Higher Education Act; a decennial analysis of the social and economic status of children in local school districts; and a national longitudinal study of elementary and secondary students' educational progress, intellectual development and economic prosperity.

The Senate recesses with an amendment ensuring postsecondary participation in the study; keying the study into the longitudinal study already underway; and adding a provision for the voluntary collection of public library data.

26. The House bill requires that data gathered for such studies shall be confidential and shall not be individually identifiable as used in reports required by this section.

The Senate recesses.

27. The House bill establishes a National Education Statistics System for the purpose of producing and maintaining, with the cooperation of the States, comparable and uniform educational information and data useful for policy-making at Federal, State, and local levels.

The Senate recesses.

28. *School Improvement Act of 1987 Data*.—The House bill, but not the Senate amendment, provides that the study shall include data on the performance of Chapter 1-served students.

The Senate recesses.

#### FAMILY SCHOOL PARTNERSHIP

1. The Senate amendment, but not the House bill, authorizes a new Secretary's discretionary grant program, entitled the Family-School Partnership Act, to provide grants to LEAs for innovative family-school partnership activities. The authorization is \$10 million for FY 1989, \$10.5 million for FY 1990, \$11 million for FY 1991, \$12.5 million for FY 1992, and \$14 million for FY 1993.

The House recesses with an amendment to incorporate this program into the Fund for the Improvement and Reform of Schools and Teaching which is authorized at \$30 million for fiscal year 1989 and at such sums through 1993. The Family School Partnership Program is to receive one-third of the \$30 million authorization level for fiscal year 1989 and one-third of such sums through 1993.

#### PARENTAL CHOICE

1. The Senate amendment, but not the House bill, authorizes a new Secretary's discretionary grant program, entitled the Parental Choice Open Enrollment Demonstration Program in Public Schools, to provide demonstration grants to LEAs to develop and implement an open enrollment program among public schools in the district. The authorization is \$15 million for FY 1989, \$16 million for FY 1990, \$17 million for FY 1991, \$18 million for FY 1992, and \$19 million for FY 1993.

The Senate recesses.

#### RURAL EDUCATIONAL OPPORTUNITIES

1. The Senate amendment, but not the House bill, authorizes a new Secretary's grant program, entitled the Rural Educational Opportunities Program, to establish and operate 10 regional rural educational assistance centers. The authorization is \$10 million for FY 1989, \$10.5 for FY 1990, \$11 million for FY 1991, \$12 million for FY 1992, and \$13 million for FY 1993.

The House recesses with an amendment authorizing a minimum of 10 rural education programs to be established by grant or contract to institutions of higher education, private non-profit agencies and organizations, regional educational laboratories, technical assistance centers established pursuant to section 1437(d), public agencies, State education agencies, or combinations of such agencies or institutions with a charge to pay particular attention to, and report on, problems related to districts with declining enrollments and ways in which districts can combine management to provide effective programs.

The agreement will allow for combined applications including one or more eligible entities, thus allowing for the participation of consortia of institutions of higher education and other combinations of agencies and organizations.

#### SECRETARY'S FUND FOR INNOVATION IN EDUCATION

1. The Senate amendment, but not the House bill, establishes the Secretary's Fund for Innovation in Education. The authorization for this fund is \$20 million for FY 1989, \$21 million for FY 1990, \$22 million for FY 1991, \$23 million for FY 1992, and \$25 million for FY 1993. This Fund gives the Secretary authority to provide grants to LEAs, SEAs, IHES and other public agencies and private nonprofit organizations under six new programs established under this Fund.

(a) *Materials for Use in Educational Television and Radio Programs*.—Grants for the development and operation of educational television and radio materials, and teacher and other school personnel training in the use of such programming.

The House recesses with an amendment to consolidate two provisions into a single program called Technology Education and to add an additional section for the optional test for academic excellence, and to remove the reservation of \$2 million for optional tests; and move part (B), Alternative Curriculum Schools of Title III of "Title I" to this part.

Alternative Curriculum Schools would strengthen the quality of education offered throughout the local school district as a means of providing improving achievement and attracting majority school children to the public schools. The new program would have an authorization of \$35 million, but no funding for this new program would be provided until the Magnet Schools program appropriation reaches \$165 million in any fiscal year. The Alternative Curriculum Schools Program would: (1) require that only high school districts with minority enrollments of 65% or higher are eligible to apply; (2) require that any participating school receiving assistance must have a minority enrollment of at least 50%; (3) require the school district or consortia of local school districts to demonstrate in its application the extent to which the federal funds will contribute to reducing racial isolation and achieving desegregation within the local educational agency or consortia thereof; (4) include statutory language indicating that the award of these funds may not be used as evidence in any litigation or administrative proceeding questioning whether or not the school district(s) is desegregated.

As illustrated by the requirement that the application indicate how establishment of an Alternative Curriculum School will promote integration throughout the district, the conferees intend that the minority composition of the other public schools in the local educational agency where the alternative curriculum school is established shall not increase as a result of the establishment of the "alternative curriculum school."

(b) *Programs for Computer-Based Instruction*.—Grants for the acquisition and leasing of computer software and hardware as well as teacher training programs in computer education.

The House recesses with an amendment of \$20 million for FY 1989 and such sums.

(c) *Programs for the Improvement of Comprehensive School Health Education*.—The House bill enables the Secretary to establish an Office of Comprehensive School Health. The Senate amendment authorizes the Secretary to fund projects which improve elementary and secondary school health education, and requires that the Secretary fund these projects through an Office of Comprehensive School Health Education established within the Department of Education.

(d) *Telecommunication and Video Instruction Program*.—Grants for programs which use telecommunications and video resources for school instruction.

The House recesses with the amendment described in (a).

(e) *Youth Suicide Prevention Programs*.—The Secretary is authorized to make grants to LEAs and private nonprofit organizations to establish and operate youth suicide prevention programs.

The Senate recesses.

(f) *Pride in Schools*.—The Secretary is authorized to make grants to schools to establish and operate programs which involve students in the care of and responsibility for the school.

The House recesses with an amendment moving Pride in Schools to FIRST as a permissible use of funds.

#### TITLE V

##### INDIAN EDUCATION

1. The House bill, but not the Senate amendment, specifically recognizes and authorizes all B.I.A. funded schools in existence or planned as of Jan. 1, 1987.

The House recesses.

2. The House bill prohibits any designated action at any Bureau funded school, except upon formal request of the tribal council of a single tribe school or the tribal councils representing an aggregate of 90% or more of the students in a multi-tribal school.

The Senate amendment prohibits the transfer of the operation or facilities of any Bureau funded school (or school program) which is operated on April 1, 1987, unless approved by the tribal governing body. This is defined as the tribal governing body or bodies representing at least 90% of the students.

The House recesses with an amendment which incorporates the other negative actions in the list of actions prohibited by the Senate language.

3. The Senate amendment, but not the House bill, says that if the Secretary makes a request to Congress for legislation to override the requirement for tribal approval, the Secretary must comply with the study and notice requirement in the statute before making such request.

The Senate recesses. The Conferees have determined that the language in the current statute, coupled with the amendment, makes clear that the Secretary may take no unilateral action, and that any recommendation to Congress for subsequent legisla-

tion permitting a prohibited action would need to be accompanied with the proper study.

4. The Senate amendment, but not the House bill, states that no action may be taken to close, consolidate, or substantially curtail a Bureau funded boarding school for failure to meet the dormitory criteria in any fiscal year for which the Secretary has not submitted the Bureau wide facilities report and recommendations, as required by current law. (Note—see note 10 on House provision)

The Senate recesses. See note 10.

5. Technical Difference.

The House recesses.

6. The House bill allows the Secretary to close, consolidate or substantially curtail a program in a school when required by facilities conditions which constitute an immediate hazard to health and safety without regard to the statutory study and consultation provisions. However, no action could be taken until a reasonable period had been allowed for the conduct of a health and safety inspection by an outside entity. The entity would either be one chosen by the tribe(s) involved or, if notice of the inspection is provided to the tribe when the request is made, by the Secretary. No action could be taken if no threat was found by the outside inspector. The section is a limitation on the current statutory provision.

The Senate amendment states that when the Secretary decides to close, consolidate or substantially curtail a school or program (as authorized by current law) and the closure is to be, in the Secretary's estimate, for longer than 1 year, the Secretary must send to Congress, no less than 6 months after the action taken, a report on the reasons for the action and the remedial actions taken or planned.

The House recesses with an amendment that stipulates that only health and safety officers shall make these determinations, according to current guidelines which shall be in effect until regulations are developed. Regulations should be developed by June 30, 1989, provided that if they are not published by this time, closures, consolidations or curtailments would have to be followed by outside evaluations, conducted pursuant to the House bill.

7. The Senate amendment, but not the House bill, changes the term "Indian controlled contract schools" to "contract schools"—no substantive effect, but see Title II, Part B.

The House recesses.

8. The House bill directs the Assistant Secretary to develop regulations for new schools and program expansions in Bureau operated schools and schools contracted under P.L. 93-638, the Indian Self-Determination Act (Note—see note 65—this provision would not apply to schools with the grants proposed). The Secretary, through regulations, could not base a decision primarily on geographical proximity to public education, and would have to give equal weight to a number of factors.

The Senate bill is, with a few technical differences, similar to the House bill, except for five provisions—the Senate directs the Secretary to prescribe the regulations; the regulations on expansions would apply to all Bureau funded schools (including those which use the proposed grants authority); this provision is made applicable specifically to program expansions which increase the amount of Bureau money received; the factors to be considered are not required to be given equal weight; and the success or failure of the applicants (not just the Bureau program) is to be considered.

The House recesses with an amendment stating that all expansions or new school

starts would be evaluated and approved under the same set of regulations, and setting out the factors to be included in those regulations and the standards and policies to be applied. With respect to the factor relating to the geographic and demographic circumstances of the programs being considered, the Conferees especially direct the Bureau to interpret this provision so as to fulfill its trust responsibility to its Indian student constituents. An example of a geographic circumstance warranting special consideration are climatic conditions or terrain which render a group of students' places of residence inaccessible for periods of the year.

Failure of current education programs to make adequate provision for this would merit special Bureau review and consideration of the necessity to provide an educational alternative close to home. Similarly, past Bureau attempts to define geographic proximity of public or alternative education in terms of time traveled or distance traveled are specifically rejected by the Conferees. Any consideration of the geographic proximity must take into account the age of the children, and distances and times as measured at all times of the year and in all types of weather.

Finally, the Conferees wish to explain that submission by the applicant of information on the factors to be considered relative to the program for which the application is filed shall constitute a sufficient application. These are the factors which are within the control or cognizance of the applicant. It would be patently unfair to rule an application as insufficient due to an omission of information which may be unattainable by the applicant. The Bureau shall be chiefly responsible for obtaining the relevant information concerning existing programs, though the Conferees intend that the applicant and all parties having knowledge pertinent to the application will cooperate with the Secretary in this regard. Failure to do so would certainly be a factor in the Secretary's deliberations.

9. The Senate amendment, but not the House bill, stipulates the date for implementation of the expansions.

The House recesses.

10. The House bill, but not the Senate amendment, stipulates that no negative action may be taken against a school in existence on January 1, 1987, for failure to meet the dormitory criteria, and that before February 1, 1988, the Secretary should provide the required report to Congress on compliance (similar to Senate provision—see note #4).

The Senate recesses with an amendment that changes the date.

11. The House bill incorporates most of the current regulations dealing with Bureau education programs (except for personnel regulations) into the statute by reference and restricts the Secretary's and Assistant Secretary's authority to amend them.

The Senate amendment creates a process for review of regulatory proposals by regional review panels which the Secretary would have to follow before any regulatory action. Certain members of the review panels, which should not be subject to the Federal Advisory Committee Act, are stipulated. The Secretary may take emergency or temporary action without review, provided that as soon as practicable, input is sought. The provisions of the Senate amendment would not apply to any regulations or amendments which were drafted and under formal review prior to October 1, 1987.

The Senate recesses with an amendment limiting the length of incorporation on all of the regulations other than those dealing with policy to June 30, 1989. The policy reg-

ulations would be incorporated permanently. The Conferees intend that future regulatory actions comport with the new provisions regarding consultation. See note 37.

12. The Senate amendment, but not the House bill, requires a 90 day comment period for the Bureau Indian education regulations and states that no regulation may become effective until 90 days after its preliminary publication. This provision shall not apply to regulations published before October 1, 1987. Also, applicability of any Federal law restricting or limiting employee communications is specifically waived, insofar as the communication relates to regulatory action involving Indian education.

The House recesses with an amendment which requires that all regulations be published for a 90 day comment period, and published in final form before becoming effective. The amendment defines the term "regulation".

13. The House bill and the Senate amendment are similar, except for the following: an additional weight for handicapped students; an additional weight for full-time and part-time gifted and talented students; the statement that the supervisor and school board of a school shall determine when a less than 9 month program is needed; and a requirement for additional funding when needed to allow a school to comply with State standards which are in addition to minimum standards needed for accreditation.

The House recesses with an amendment that changes the effective date of these changes, deletes the provision regarding part-time gifted and talented programs, makes the full-time gifted and talented provision subject to a definition to be developed by a tribally controlled postsecondary institution or group under another provision of this Act and the availability of funds, further defines the factor regarding State standards and limits this factor to two years, and required a General Accounting Office study of the needs relative to a pre-school handicapped factor. In conducting this study, the Conferees direct the General Accounting Office to work with, and consult with, tribes and tribal organizations, as well as the Bureau of Indian Affairs and the Indian Health Service, to determine the needs and the populations to be served, as stipulated in the statute.

The Conferees intend that these factors be the factors used for these students in lieu of the factors ordinarily used for the computation of academic weights. Other weights, relating to boarding or special needs or programs, would be cumulative.

14. The House bill amends the Indian Student Equalization Formula to make the administrative cost factor a part of the formula.

The Senate bill creates a new grant authority for administrative cost payments, which would be in lieu of any payments to which contractors might otherwise be entitled. The Senate also spells out specific uses and purposes for the money.

The House recesses.

15. The Senate amendment, but not the House bill, stipulates the sums received under this provision will be in addition to and shall not reduce other funds received for the school program.

The House recesses.

16. Senate amendment, but not the House bill, stipulates that the cost rate shall be used for all direct programs which share common administrative cost functions, and will be made applicable to all others, at the tribe's option. (See Note 19.)

The House recesses with an amendment.

17. The House bill sets the administrative cost percentage for each school as 12% of the total direct program funds of each contractor (for education and shared/administrative cost activities) times 50% of the average total direct program funds for all contractors divided by the sum of such direct program funds of the contractor plus the average of such direct programs funds for all Bureau contractors. This figure would be adjusted for the special cost factors for isolation, multiple programs or multiple cost accounting (see Note 27—the Senate has similar provisions). The product (as expressed to two decimal places) is then used in the Indian Student Equalization Formula computations. Computations would be made on preceding year's data (see Note 23) and the formula would be implemented in FY 1989.

The Senate amendment makes the administrative cost percentage for each school the percentage determined by dividing the direct cost base for a tribe or tribal organization (see Note 23) by the minimum base rate (see Note 25—initially 12%) plus (the amount equal to the standard direct cost base (see Note 28—initially \$600,000) multiplied by the maximum base rate (see note 24—initially 50%)) by the sum of the direct cost base of the tribe or tribal organization for the FY, plus the standard direct cost base. This amount would be adjusted for an isolation and a multiple program factor. This amount (to the second decimal) would be multiplied by the contractor's direct cost base to give a separate grant amount.

The House recedes with an amendment correcting an omission.

18. The Senate amendment, but not the House bill, states that the funds received pursuant to this section shall not be considered for over- or under-recovery computations.

The House recedes.

19. The House bill, but not the Senate amendment, requires the Bureau, as lead agency, to pay administrative costs based upon the formula for all flow-through Education Department programs contracted, regardless of other provisions governing specific programs, provided that the Bureau shall reduce the amount received by administrative cost payments actually received under other programs and shall take such actions as may be necessary to recoup the funds from the other sources. The administrative rate under this section shall be applied to all Bureau programs contracted (see note 16 for similar Senate provision).

The Senate recedes with an amendment deleting the provision making this percentage applicable to any other tribal program (other than those specified in this Act).

The Conferees intend that the Bureau interpret this provision in the following manner: the Secretary shall calculate the amount of flow-through funds for each contractor and grantee and pay to each, as part of this administrative cost grant, an amount equal to the percentage determined under this provision multiplied by the flow-through amount, regardless of any limitation on administrative costs contained in another status. This amount shall be reduced, or "offset", by the amount actually received by a contractor or grantee from the flow-through program for administrative costs. The Secretary shall then seek to recoup, from the Federal agency having primary jurisdiction over the flow-through program, the difference between the amount paid under this provision to support the flow-through program and the amount of administrative costs actually received under the program.

20. The Senate amendment, but not the House bill, defines administrative cost. The

provisions are similar to the House provisions. (See Note 34.)

The House recedes.

21. Both House bill and Senate amendment define the Bureau elementary and secondary education functions, with only technical differences.

The House recedes.

22. The Senate amendment, but not the House bill, defines the term "tribal elementary and secondary education programs".

The House recedes.

23. The Senate amendment, but not the House bill, defines the direct cost base of a tribe or tribal organization. The figure would be based upon data from the second preceding fiscal year or on a projection.

The House recedes with an amendment making technical corrections.

24. The Senate amendment, but not the House bill, defines the maximum base rate allowable as either 50% or a figure to be obtained by a study done by the Secretary (see Note 28). The rate is to be published in the Federal Register.

The House recedes with an amendment setting the maximum base rate and removing the Secretary's discretion to alter it.

25. The Senate amendment, but not the House bill, defines the minimum base rate allowable as either 12% or a figure to be determined by a study done by the Secretary (see Note 28). The rate is to be published in the Federal Register.

The House recedes with an amendment setting the minimum base rate and removing the Secretary's discretion to alter it.

26. The Senate amendment, but not the House bill, defines "standard direct cost base" as \$600,000 or an amount set by the Secretary based upon studies (see Note 28). This is to be published in the Federal Register.

The House recedes with an amendment setting the standard direct cost base and removing the Secretary's discretion to alter it.

27. Both the House and the Senate bill define isolation and multiple program adjustment factors. The definitions are similar except that the Senate allows the Secretary to modify the initial rate based upon studies and publication in the Federal Register and the Senate establishes the agency and area offices as sites from which to measure mileage.

The House recedes / The Senate recedes.

28. The Senate amendment, but not the House bill, directs the Secretary to conduct certain studies to establish the elements of the administrative cost formula, and establishes certain requirements for these studies. It states that determinations in the study are to be based on what is "pragmatically possible" and "prudent". The studies are to be done and submitted to Congress no later than October 1, 1988.

The House recedes with an amendment specifying the terms to be covered by the study(ies) conducted and defining the terms. For the guidance of those who conduct this study, the Conferees cite the fact that original drafts of the legislation included the isolation factor and multiple program adjustment. However, concerns about definition, need and administration led to their deletion. Some of the problems which plagued the Conference may become apparent if the persons who undertake this portion of the study study these provisions.

29. Both provisions require an annual budget submission on the impact of the formula—Technical Differences.

The House recedes.

30. The Senate amendment, but not the House bill, authorizes such sums as may be necessary for the administrative grants.

The House recedes with an amendment authorizing pro-rata reduction if funds are

insufficient for full funding of these grants at the mandated amounts.

31. The Senate amendment, but not the House bill, has a provision stating that the grants for administrative costs are in lieu of any other payment. It also states that changes in funds received by schools due to implementation of the formula shall be phased in over a three year period and that a tribe may elect not to be covered by this provision for those three years.

The House recedes with an amendment deleting the tribal option not to have this section apply and making the dates of phase-in consistent with the proposed date of enactment.

32. The House bill, but not the Senate amendment, reserves 133% of the funds appropriated for the Indian Student Equalization Formula for national school board training, to be conducted as it was done in 1988. The agenda would be set by the school boards through their regional or national organizations. The House bill also contains a reservation of funds for each school for local school board training.

The Senate recedes.

33. The House bill, but not the Senate amendment, authorizes each Bureau operated school to carry forward, at the election of the local school authority (with school board approval), up to 15% of the funds for each fiscal year beginning October 1, 1987 and after.

The Senate recedes.

34. Technical Difference—see note 20.

The House recedes.

35. Both the House bill and Senate amendment contain similar provisions relating to local procurement. The Senate amendment requires that school board approval be in advance and the House bill requires that purchases be from funds under sec. 1128 and states that the provision would be applicable for FY 1988 and after.

The House recedes with an amendment clarifying the limit of this authority and deleting the requirement that school board approval must be in advance. The Conferees intend that each school board determine the best method for reviewing the proposals and using the authority under this paragraph.

36. The House bill, but not the Senate amendment, authorizes coordinated programs between local public schools and Bureau operated programs. Agreements would be negotiated between the tribe(s) and the public school and would have to be implemented by the Bureau (to the extent funds under the Indian Student Equalization Fund are available). Certain activities are specifically authorized.

The Senate recedes with an amendment which adds the Bureau school board as a party to any agreement and requires that any agreement entered into provide a benefit for the Bureau school commensurate with the burden assumed by the school, though this should not be strictly equated in terms of equal expenditures or the exchange of similar services.

37. The House bill requires that all actions under this Act be done in consultation with tribes and defines consultation as periodic and systematic meetings with tribes and organizations, with Federal Register notice of meetings being required. A list of topics would be required in the notice and information on all upcoming administrative matters would have to be provided (including the Budget). Other issues of interest could be raised, including issues in other Departments. Only those issues discussed in public meeting would meet the consultation requirement of this section. Bureau officials would also meet on request.

The Senate amendment requires that the Secretary consult with Indian tribes and tribal organizations on the "development of policy" under the Act. The Secretary or a representative shall conduct semi-annual meetings with tribes and organizations on matters relating to Indian education, with Federal Register notice being required for the meetings. At the meetings, information on all matters relating to Indian education which are being considered for change in the succeeding 6-months are to be discussed. Other issues could be raised, including issues involving other Departments. The Senate amendment also requires meetings with individual tribes on education issues affecting them and requires that the Secretary "invite active participation" in decisions affecting the schools. Planning for such meetings shall be cooperative and consultative in nature. The Senate amendment also includes a provision relating to consultation on the local level as to actions involving local schools, to be taken in conjunction with the notice required in section 1121(g) of the statute (studies).

The Senate recedes with an amendment setting out consultation as a process, to involve a total and open exchange of views, concerns and ideas, and to be conducted as between equals. The Secretary is required to give effect to the views of interested parties, unless a contrary decision is based upon information actually brought forward during the discussions, that there is a substantial reason for a contrary course of action. The Conferees intend that the requirement that the decision be based upon public information will be implemented strictly. It is included to foster an open and public discussion, the basis for any true consultation. This would have to be reduced to writing, upon receipt of a request from a Congressional Office.

38. The Senate amendment, but not the House bill, allows waiver of Indian preference for both the "applicant or employe".

The House recedes.

39. The Senate amendment, but not the House bill, amends the Bureau education personnel provisions to make the contract system applicable to employees currently covered by Civil Service wage grade classification. This provision would apply only to current employees if they so elect.

The House recedes.

40. The House and Senate have similar provisions requiring a study of personnel costs. The Senate amendment stipulates that public schools used for comparison shall be comparable in four respects and that the final report contain comparisons of certification and length of work year and work day, in addition to the other, common requirements.

The House recedes with an amendment setting the date for submission of the study.

41. The Senate amendment, but not the House bill, stipulates that the costs for the study (other than personnel expenses) shall come from the General Administrative account. The Senate amendment also authorizes the Secretary to conduct such other personnel compensation and recruitment studies as are desirable.

The House recedes.

42. The House bill defines the term "educational personnel". The Senate amendment defines the terms "Secretary" and "Bureau".

The House recedes.

43. The Senate amendment, but not the House bill, amends the rate provision of the Bureau's education personnel section to require that the salaries paid shall be comparable to teachers of similar professional training and experience serving comparable

students in comparable public schools, with certain adjustments.

The House recedes with an amendment which requires the Secretary to either 1) use the overseas pay schedules used by the Department of Defense, or 2) negotiate with the exclusive collective bargaining agent of the employees. Unless the Secretary chooses to negotiate within the allotted time, the Department of Defense pay schedules (with the given caveats) would be automatically effective. Changes would be distributed equally over a three-year "phase-in" period and there are other administrative provisions relating to election by current employes and furloughs. The Conferees intend that all decisions on furloughs be made locally, not dictated by any division or office at a higher level.

The Conferees wish to make it clear that this provision applies to setting wage rates. The Bureau is to retain its administrative practices which relate to promotions, the setting of initial wages, and other issues, using merit, education, experience and length of services. The Conferees specifically intend that dormitory counselors, also referred to as home-living specialists, come under this provision.

44. The House bill mandates that in those instances where the Assistant Secretary determines there is a disparity in compensation which affects the recruitment and retention capability of a school to an extent where services are impaired, the Assistant Secretary shall (subject to school board approval) give the supervisor authority to use the 25% differential currently found in statute. Any time there is a 5% disparity in compensation (as determined by the studies—see Note 40), the authority for the differential would be automatically given to the local school supervisor. Each year, the Assistant Secretary shall submit, as part of the Budget submission, a report on all requests for this authority and the determinations on such requests, and all positions contracted under such provisions.

The Senate amendment amends section 1131 of the Act and states that upon the request of the local school board, the Secretary shall grant the supervisor the authority to provide one or more post differentials, (allowed under current law) unless the Secretary determines for "clear and convincing reasons" (in writing) that the requested differential is not needed. A school board request shall be viewed as approved, unless denied in 60 days. The Secretary or school supervisor is authorized to discontinue or reduce the differential at the beginning of a school year either at the request of the school board or if (subject to the same limitations) a finding is made that it is no longer necessary. A report similar to the House bill provision is required by February 1 of each year.

The House recedes.

45. The Senate amendment, but not the House bill, authorizes \$15 million for 1989 and each succeeding fiscal year for grants for programs of early childhood education to serve children under 6, and their parents. Grants would be made for a range of stipulated activities and distributed to tribes of more than 500 members based upon a formula based on a tribal percentage of the national eligible Indian population under age six. Grantees are to provide instruction in tribal language, art and culture and grants are to be coordinated with other programs and to have periodic assessments. Amounts for administrative costs are to be provided from the funds authorized and appropriated under this section.

The House recedes with an amendment clarifying that the funds for these grants are to be used to coordinate resources pro-

vided under other programs or to "fill in the gaps" in services provided or eligible populations served by the other programs. Such services would not be subject to the same limits on eligibility of the child or family, or on services to be offered, found in other programs. The specific activities would be spelled out during the application process. The amendment also clarifies that a consortium to tribes, which has an aggregate of more than 500 eligible members, may qualify. This will allow participation in the program of tribes with fewer members.

46. The Senate amendment, but not the House bill, includes definitions for "Bureau funded school", "Bureau school" and "contract school", which would be applicable to all provisions of Title XI of P.L. 95-561.

The House recedes.

47. The Senate amendment, but not the House bill, provides that in any fiscal year in which a sequestration order (under the Gramm-Rudman provisions) reduces the funds under section 1128 of the statute (Indian Student Equalization Formula) by more than 5%, the Secretary would be authorized to waive the provisions of section 1121 pertaining to notice and study prior to closure and consolidation and would be authorized to use the funds otherwise used in such closed or consolidated programs in other Bureau funded schools.

The House recedes with an amendment raising the trigger to a 7% sequestration and clarifying that the reduction must be based upon a 7% reduction in the previous year's funding level. This means that this provision may not go into effect if the current Fiscal Year amount being reduced shows a substantial increase from the previous year's funding level.

48. The Senate amendment, but not the House bill, authorizes such sums as may be necessary for grants to establish tribal departments of education, which shall, among other duties, coordinate all education programs (Federal and other), and develop education codes, standards and policies. No terms other than those stipulated in the statute could be placed on the grants.

The House recedes with an amendment setting out a priority to be given to applications containing certain factors. The Conferees intend that the provision relating to the administration of education contracts by the Tribal department of education not be interpreted as requiring a single contract for elementary and secondary education programs (funded under Title XI of P.L. 95-561) or the administration of a tribally controlled community college by the department of education. As is currently the case, this decision remains one totally within the discretion of the tribal governing body. Specifically, the Conferees intended this provision to apply to Johnson-O'Malley and Higher Education grants, where the tribe contracts these programs, and other education grants for which tribe may be eligible.

49. The Senate amendment, but not the House bill, directs the Secretary of Interior to make a study of the distribution of funds under the Johnson-O'Malley Act and report to Congress on legislation which would guarantee its most "effective and equitable distribution".

The Senate recedes.

50. The Senate amendment, but not the House bill, amends the current statutory provisions on attendance areas to state that when there are two or more Bureau funded schools on a reservation, the relevant school boards, at the direction of the tribal governing body, may establish the attendance areas for the schools involved.

The House recedes.

## PART B—TRIBAL SCHOOLS GRANT AUTHORITY

51. Technical Difference—The House and Senate have different titles.

The House recedes.

52. The Senate amendment, but not the House bill, contains a statement on the use of funds and the need to submit an application.

The House recedes.

53. Technical differences - drafting differences between the House and Senate version.

The House recedes.

54. The House bill combines operation and maintenance funds into the single grant where the school has requested and receives them. The Senate amendment does not contain the limitation.

The Senate recedes.

55. The Senate amendment, but not the House bill, stipulates that no more than one grant under this program may be made with respect to any Indian tribe for each fiscal year.

The House recedes with an amendment clarifying that grants are not limited to one per tribe. The Conferees intend that the decision to have a single grant for all school programs, separate grants for "stand-alone" schools or a combination of these arrangements be made in Tribal Council Chambers, not on Capitol Hill.

56. The House bill says that a multisite grantee shall spend no less than 90% of the funds generated by each site, or \$400,000 (whichever is least) at the site which generates the funds. The Senate requires that not less than 90% of the funds generated by a site be spent on-site.

The Senate recedes with a clarifying amendment.

57. Technical differences—see Note 62 and 70.

The House recedes.

58. Similar provisions, but the Senate bill does not include the requirement that if the Secretary takes a retrocession of a program which has had a grant, the Bureau shall provide services at no less than the level planned for by the grantee. (See note 70.)

The House recedes/The Senate recedes.

59. The Senate amendment, but not the House bill, includes a provision for the Secretary to transfer to a tribe a school, if the Secretary determines that the school is eligible for assistance under this part.

The House recedes.

60. Technical differences.

The House recedes/The Senate recedes.

61. The House bill, but not the Senate amendment, provides an option to an applicant on which regulations and guidelines shall be used to review an application for expansion which was submitted prior to the date of enactment.

The Senate recedes with an amendment incorporating the House provision relating to the review of applications for expansion within section 5104, see note 8.

62. Technical Differences—see note 57

The House recedes/The Senate recedes.

63. Technical Differences (see notes 72 and 73)—The Senate amendment, but not the House bill, also provides for the transfer of a school where requested.

The House recedes/The Senate recedes.

64. Technical Differences (see notes 72 and 73).

The House recedes/The Senate recedes. The Conferees wish to make plain that submission of the information within the control of the applicant constitutes a sufficient application, see comment under note 8.

65. The House and Senate have similar provisions (see note 71). The Senate amendment states that expansions of more than two grades must wait a statutory period of

time. (See also note 8 on Senate provisions relating to new school regulations.)

The House recedes/The Senate recedes.

66. Technical Difference—see notes 72 and 73.

The House recedes.

67. The House bill, but not the Senate amendment, requires that all applications be filed at the Agency Office, Area Office, or Office of the Director of Indian Education Programs, at that officer's discretion and that statutory timelines shall run from date of receipt at the designated office.

The Senate recedes with an amendment stipulating the officers to receive the applications, amendments to applications or required reports.

68. Technical differences.

The House recedes/The Senate recedes.

69. The House and Senate have similar provisions, except: the Senate provision uses the term "ensuring the credits received by students", while the House uses the term "showing the credits received by students"; the Senate conditions tribal accreditation upon that accreditation "being accepted by a generally recognized regional or State accreditation agency"; The Senate uses the term "impartial evaluator", while the House uses the term "outside evaluator"; and the Senate uses the term "tribal governing body", while the House uses the term "tribal authority".

The House recedes/The Senate recedes, making technical clarifications, requiring that tribal standards be accepted by a generally recognized regional or State accreditation agency, and requiring that the applicable tribe(s) receive the required reports and notice of any audit exceptions.

The Conferees wish to emphasize that the statute is worded to require the grantee to submit the reports and the Secretary to register the receipt of the required reports. There is no authority for the Secretary to review or approve the reports. It has been just this process of review which has been the most intrusive method used by the Bureau for retaining effective control or veto power over locally controlled schools.

70. The House bill, but not the Senate amendment, states that the grants under this Act may not be terminated, modified, suspended or reduced for the convenience of the administering agency. (Also see note 58.)

The Senate recedes. The theory of "administrative convenience", as a grounds for termination, was first used by the Bureau in 1984 with respect to two contracts with the Navajo Community College. The terminations were challenged in the Interior Board of Contract Appeals, which reversed the Bureau's terminations (IBCA Opinion Number 1834). The Bureau, however, has never specifically stipulated that it has reversed its position that "administrative convenience" is a proper ground for termination or modification. The Conferees specifically have prohibited its use, at least insofar as these grants are concerned, and do not intend that their actions signal any acceptance of the theory with respect to any other grant, contract or agreement.

71. Technical differences—See note 65.

The Senate recedes.

72. Technical differences—see note 63.

The House recedes/The Senate recedes. The Conferees intend that the requirement for tribal governing body approval apply to all applications received, including those submitted by any tribal organization.

73. Technical difference—see note 63.

The House recedes.

74. The House and Senate have similar provisions, with these exceptions: The House specifically references transportation as in the grant. The Senate contains lan-

guage relieving schools with grants from all statutory requirements pertaining to Chapter I and Handicapped flow-through moneys, while the House relieves schools with grants from extra-legal requirements imposed by the Bureau, and specifically requires that the programs required by the basic legislation be carried out.

The Senate recedes with an amendment stipulating that while monies received from the Bureau pursuant to setasides under other Federal authorities are to be included in the simple grant under this provision, an amount no less than the amount received under each separate authority must be spent on programs specifically authorized under that authority and specified in the application(s) submitted by the school for participation in each program.

75. Technical difference—see note 77.

The House recedes.

76. Technical difference

The House recedes.

77. Technical difference—see note 75.

The House recedes.

78. The House provisions puts no time limit on a current contractor's right to elect to have a grant, but states that it shall not start until 60 days after the election or October 1 of the FY following the FY in which the election was made, whichever is later. The Senate provision requires a contractor to elect to be covered within 120 days of date of enactment and to make the election in such manner and at such time as the Secretary shall prescribe.

The Senate recedes.

79. The Senate amendment, but not the House bill, provides that no funds provided under the Indian Self-Determination and Education Assistance Act shall be spent for activities for which funds have been received under this Act.

The House recedes.

80. The House bill, but not the Senate amendment, states that regulations prescribed under this Act shall not have the standing of a Federal statute for the purposes of judicial review.

The Senate recedes.

81. The House and the Senate have similar provisions, except that the Senate includes a definition of "Bureau".

The House recedes.

## PART C—INDIAN EDUCATION ACT

82. The Senate amendment, but not the House bill, recodifies the parts of the Indian Education Act, currently found in four statutes. With the noted exceptions below, the provisions are substantively the same as are found in current law.

The House recedes.

83. The Senate amendment, but not the House bill, includes a new definition—"eligible Indian children".

The House recedes.

84. The Senate amendment, but not the House bill, changes "by such State" to "of such State".

The House recedes with an amendment changing "of" to "by", thus retaining current law.

85. The Senate amendment, but not the House bill, changes "average daily enrollment" to "average daily attendance".

The House recedes.

86. The Senate amendment, but not the House bill, changes "planning for and taking other steps leading to the development of" to "planning and development".

The House recedes.

87. The Senate amendment, but not the House bill, deletes the term "special" from the phrase "special regulations".

The House recedes.

88. The Senate amendment, but not the House bill, deletes the phrase "specially designed to meet the special educational or culturally related academic needs, or both", as it pertains to equipment.

The House recedes.

89. The Senate amendment, but not the House bill, changes "schools eligible for funding under" to "schools receiving funds under".

The House recedes with an amendment retaining current law.

90. The Senate amendment, but not the House bill, deletes the phrase "(including persons acting in loco parentis other than school administrators or officials)". See definitions, note 119.

The House recedes.

91. The Senate amendment, but not the House bill, deletes the same phrase as in note 90. See note 119.

The House recedes.

92. The Senate amendment, but not the House bill, requires that each application include a form establishing the eligibility for each Indian student counted.

The House recedes.

93. The Senate amendment sets out specific information to be requested on the form establishing eligibility. The provisions are the same as current law, except that the Senate uses the term "child" instead of "applicant" and, with relation to tribal enrollment numbers, "if applicable" instead of "where applicable".

The House bill changes the current language to state that the forms shall be used only for collecting statistical information, not for establishing eligibility.

The House recedes. The Conferees specifically reference the comment at note 95. The term "if applicable" has been changed to "if readily available". Other proofs or evidence would be equally acceptable for these students.

94. The Senate amendment changes the phrase "construed as changing or restricting the applicable eligibility definition" to "construed as affecting the definition".

The House bill adds the statement that failure to provide any information relating to the form shall have no bearing on eligibility.

The House recedes.

95. The Senate amendment states that the criteria for establishing eligibility for the program shall be the same as those used in the 1985-1986 academic year.

The House bill states that the determination of eligibility shall vest solely with the local educational agency and the parent committee. They shall establish local written guidelines for proof and determinations shall be based upon a parent committee review of such evidence as the parent may submit. A positive determination could be reviewed by the local education agency and overruled. The Secretary would not review.

The House recedes with an amendment which accepts the Senate's provision on prohibiting change, by regulation or practice, in the proof of eligibility forms and standards. These forms and standards are to remain as they were in the 1985-1986 academic year. Specifically, the Conferees intend that this language preclude: 1) Departmental efforts to restrict or catalogue the proofs of eligibility which may be accepted, and 2) efforts to require a tribal enrollment number or other numerical identifier in the instances where a tribe has such rolls. Specific language to this effect has been included. The House amendment also specifies that all audits are to be based upon the policies and practices established by, or pursuant to instructions received from, the Office of Indian Education programs. The Conferees intend to preclude separate policy

or statutory interpretations being made by the Office of the Inspector General or any other Division. As a remedy to one such instance, the amendment includes language "forgiving" recent audit exceptions based upon the submission of applications for Indian Education Act, Part A, funds of counts based on projected, tentative or incomplete Form 506 eligibility forms. Such a count, on a February submission, has a sound basis in practice and practicability. Finally, the amendment specifically sets into legislation the practice of a "good-faith" effort to comply with the eligibility proof requirement. Such an effort, predicated upon a showing that a good faith effort has been made to obtain the required information, which is in the control of others, is sufficient to qualify the student. It should be noted that no time limit or requirement for periodic renewal is included or within the intent of this provision.

96. The Senate amendment, but not the House bill, changes the maintenance of effort provision to require 90% m.o.e., with the provision for ratable reduction for any year in which m.o.e. falls below 90% and a Secretarial waiver for "precipitous and unforeseen decline in the agency's financial resources".

The House recedes with an amendment duplicating the maintenance of effort provision in Chapter I of the Education Consolidation and Improvement Act.

97. The Senate amendment, but not the House bill, deletes the term "and stimulate them" after assist.

The House recedes.

98. The House bill, but not the Senate amendment, adds a provision for a tribal division of education grants—to receive a 10% setaside of funds under this section. (see note 104)

The House recedes.

99. The House bill, but not the Senate amendment, adds a provision for grants to consortia of tribes, local educational agencies and institutions of higher education to institute programs to encourage Indian students to go on to higher education and to prevent drop-outs.

The Senate recedes.

100. The Senate amendment, but not the House bill, changes "or" to "and".

The House recedes.

101. The Senate amendment, but not the House bill, adds the term "adults" to "Indian children".

The House recedes. The Conferees, by adding the term "adult", do not intend to alter the current activities drastically. Evaluations of programs providing services to elementary and secondary programs and children are still to receive priority consideration.

102. Technical Difference

The House recedes.

103. The Senate amendment, but not the House bill, changes "make adequate provision for" to "provide for".

The House recedes.

104. The Senate amendment deletes current specific authorization for the regional assistance centers and the limit that no more than 15% of the funds for such centers could go to state educational agencies.

The House reserves 10% of the funds for activities under subsection (c) to be spent under (c)(3).

The House recedes with an amendment retaining the current authorization for the regional resource centers.

105. The Senate amendment extends the current authorization of \$2,000,000 per FY through FY 1993.

The House authorizes such sums as may be necessary for the same period.

The Senate recedes.

106. The Senate amendment, but not the House bill, adds the phrase "to be necessary" to the Secretary's determination of the amount to be paid to an institution.

The House recedes. The Conferees direct the Secretary to review current practices with respect to determining eligibility for Fellowships. The Department has, through its application process, restricted the access of non-reservation based and non-Federally recognized Indians to this program. The definition for this activity is the same as for the rest of the Act, and is inclusive, not exclusive. Indian students, particularly those who have been adopted, must not be placed under impossible requirements or at a disadvantage.

107. The Senate amendment, but not the House bill, adds a requirement that the Secretary provide notice no less than 45 days before the commencement of an academic term of the assistance to be provided.

The House recedes.

108. The Senate amendment, but not House bill, adds a new program for the establishment of two centers for gifted and talented students at Sinte Gleska College and Navajo Community College. Grants would be made to these entities and the American Indian Higher Education Consortium for the design of demonstration projects for a number of purposes. Subgrants could be made with the Children's Television Workshop. Grantees would be encouraged to work cooperatively as a national network. \$3,000,000 per FY is authorized through 1993.

The House recedes with an amendment deleting the specifically named schools and substituting as eligible to compete all fully accredited tribally controlled community colleges which are eligible to receive funds under P.L. 95-471. Two such grants are to be made.

The amendment also contains provisions from Part D of Title VIII of the House passed bill H.R. 5, the Model Schools Act. Drafted and sponsored by Mr. Richardson of New Mexico, these provisions direct the Secretary, in consultation with the Secretary of the Interior, to designate 5 schools nationwide for the development of programs for gifted and talented students and curricula and teacher training materials. Specific activities are set forth, as are requirements for coordination with the tribally controlled community colleges designated by these sections. The Conferees intend that the colleges supply research and technical assistance to the field in general and the model schools in particular, that the model schools, in cooperation with the colleges, define needs and develop program, and that the colleges evaluate the programs and aid in their dissemination.

Finally the amendment stipulates that the first activity to be funded under this provision should be the development of the definition to be used in implementing the new Indian Student Equalization Formula factor for gifted and talented students included in section 5107 this Act. The report on this grant is to be directly submitted to the Secretaries of Education and Interior and to the Congress.

109. Technical difference.

The House recedes.

110. The Senate amendment, but not the House bill, deletes general statement of activities allowed.

The House recedes.

111. The Senate amendment, but not the House bill, changes the term "promulgated" to "prescribed", with reference to regulations.

The House recedes.

112. The Senate amendment authorizes such sums as may be necessary for 1989 and the 4 succeeding Fiscal Years.

The House bill authorizes \$8 million for FY 1988 and such sums as may be necessary through FY 1993.

The House recesses.

113. The Senate amendment, but not the House bill, establishes an Office of Indian Education reporting directly to the Secretary of Education.

The House recedes with an amendment stipulating that the Director is to report directly to the Assistant Secretary for Elementary and Secondary Education giving new authorities and responsibilities to the Director for the Office of Indian Education, placing him at the forefront of the Department's efforts for Indian education. The Conferees are disturbed with reports of employees being given duties and tasks unrelated to their functions within the Office, with the refusal of needed overtime for work on Indian Education matters (particularly when overtime is abundantly available for other matters) and with reports leading to a general opinion that the Department has not shown proper interest in, or for, this program. More drastic action was contemplated, but rejected, for now. However, the Conferees are committed to monitoring this situation closely.

The amendment also retains current law relating to the role of the National Advisory Council on Indian Education in choosing the Director.

114. The Senate amendment, but not the House bill, establishes Indian preference in the Office of Indian Education.

The House recedes with an amendment stipulating that all professional staff within the Office of Indian Education must have experience in Indian education programs. The definition of "Indian" to be used for this provision is the same as the one for all other purposes of this Act, found at section 5351(4). The amendment also creates an Indian preference for all personnel actions within the Office, to be administered in the same fashion as "veterans' preference" laws are administered. The Conferees also direct the Secretary to develop career goals and training opportunities for these and other qualified Indian employees.

As a first step to foster Indian preference, the amendment also includes a provision to give current non-Indian employees of the Office a one-time preference in moving to other positions within the Department for which they are qualified. Such a move must be voluntary. The Conferees intend that this provision be administered in concert and at the same time as the other provisions in this section.

115. The Senate amendment, but not the House bill, deletes "Alaskan Natives" from specific eligibility to sit on the N.A.C.I.E. The Conferees note that the definition of Indian for the program includes Alaskan Natives.

The House recedes. The Conferees do not intend that this be interpreted as a change from current policy or practice.

116. The Senate amendment, but not the House bill, includes an authorization for the administrative provisions.

The House recedes.

117. The Senate amendment, but not the House bill, includes a number of new definitions for the program, including:

- (1) adult—similar to that in the Adult Education Act—sec. 303;
- (2) adult education—similar to that in the Adult Education Act, however, adds caveat that program is for adults "who are not enrolled in secondary school";
- (3) free public education—similar to the provision for the E.S.E.A. and the E.C.I.A.,

but deletes the phrase "except that such term does not include any education provided beyond grade 12";

- (4) local educational agency; and
- (5) Secretary.

The House recedes.

117(a). The Senate amendment, but not the House bill, amends the definition of Indian to delete the phrase "which regulations shall further define the term 'Indian' from the Secretary's rulemaking authority.

The House recedes.

118. The Senate amendment, but not the House bill, includes in the term local educational agency schools operated by the Bureau of Indian Affairs.

The House recedes with an amendment stipulating that existing programs receiving Title IV grants will be held harmless at the Fiscal Year 1988 per student formula grant amount plus an inflation factor of 2%. All other monies appropriated above that amount will be used to bring the Bureau of Indian Affairs schools into the formula program. Once appropriations are sufficient to bring all programs to the same level, this hold harmless will no longer apply and all eligible grantees will be treated the same. The Conferees are in full agreement on the equity of including B.I.A. operated schools in the Title IV program and agree to work with their respective Appropriations Committees to see that the necessary funding is made available in Fiscal Year 1989. The Conferees emphasize that students attending BIA schools should receive the same services that are now available to Indian students in public and contract schools and that this hold harmless was deemed necessary only because the program has received significant reductions in the last decade. A further reduction in program dollars of 8 or 9 percent would likely cause some programs to cease operating.

119. The Senate amendment, but not the House bill, includes a caveat that the term "parent" includes those acting in loco parentis (see notes 90 and 91).

The House recedes.

120. The Senate amendment, but not the House bill, repeals the current provisions of the Indian Education Act of 1972.

The House recedes.

#### PART D—NATIVE AMERICAN SCHOOLS

121. The House bill, but not the Senate amendment, establishes a Native American School Act.

The House recedes. The essence of this provision, authored by Mr. Richardson of New Mexico, has been moved under the Indian Education Act.

122. The House bill, but not the Senate amendment, includes definitions for the Act.

The House recedes.

123. The House bill but not the Senate amendment, authorizes the Secretary of the Interior to consult with Indian tribes concerning the establishment or recognition of five Native American Indian schools. Tribes may petition for the creation of such schools and schools currently funded by the Bureau of Indian Affairs may be recognized. Each school so recognized will be established as a separate Federal corporation and organized according to the requirements of this Act.

The House recedes.

124. The House bill, but not the Senate amendment, requires that each Native American Indian School have a Board of Directors composed according to the Act. The Act also contains provisions governing the appointment of the Board, terms, compensation, officers, meetings, and other administrative matters. The Board is to formulate

the policy and direct the management of the school.

The House recedes.

125. The House bill but not the Senate amendment, sets out the general powers of the Board.

The House recedes.

126. The House bill, but not the Senate amendment, establishes the position of Superintendent of the School, who shall carry out the policies and functions of the School and have authority over personnel and activities. Compensation is set at that of a GS-15.

The House recedes.

127. The House bill, but not the Senate amendment, sets out that staff of the school would be exempt from Civil Service and sets out rules for establishment of a personnel system including compensation, leave, resolution of disputes and disciplinary issues and changeover to the new system.

The House recedes.

128. The House bill, but not the Senate amendment, sets out the functions of the school which include: basic instruction, programs for gifted and talented and students with special needs, college preparation and programs which culminate in the completion of the program of studies for elementary and secondary schools.

The House recedes.

129. The House bill, but not the Senate amendment, establishes Indian preference in hiring, employment, and contracts, grants and fellowships.

The House recedes.

130. The House bill, but not the Senate amendment, sets forth the nonprofit and nonpolitical status of such a school.

The House recedes.

131. The House bill, but not the Senate amendment, enumerates statutes which shall have specific applicability to the activities of the school and states that all Federal criminal laws on larceny, embezzlement and conversion of property shall apply.

The House recedes.

132. The House bill, but not the Senate amendment, sets out requirements for the establishment of an endowment program for a school under this Act.

The House recedes.

133. The House bill, but not the Senate amendment, authorizes the Secretary to provide funds for these schools in accordance with current applicable statute and other Federal programs, states that such schools are eligible for funding under the Indian Education Act and authorizes the Secretary to expend such sums as may be necessary to ensure the "orderly establishment" of such schools.

The House recedes.

#### PART E—NATIVE HAWAIIAN PROGRAMS

134. The House and Senate bill have similar provisions. However, the House includes specific mention of "learning disabled, educably retarded . . . and other such students" (in addition to the term "handicapped").

The Senate recedes.

135. Technical difference—the Senate throughout refers to "Act", the House refers to "title"—difference in drafting.

The Senate recedes.

136. The Senate amendment, but not the House bill, adds "implementation of faculty development programs for the improvement and matriculation of Native Hawaiian Students" to the activities authorized under the demonstration grant program.

The House recedes.

137. The Senate amendment directs the Secretary of Education to establish a Native Hawaiian Gifted and Talented Center at the University of Hawaii at Hilo, specifically

references the University of Hawaii at Hilo and the Kamehameha Schools/Bernice Pauahi Bishop Estate as an eligible contractor for demonstration program contracts and states that contractors may subcontract with the Children's Television Workshop. It also includes the needs of the families of gifted and talented as to be addressed.

The House bill directs the Secretary to make contracts with the State of Hawaii, including its junior or community colleges, for such activities.

The House recedes with an amendment stating that the initial grant or contract shall, subject to appropriations and satisfactory performance, be for a term of three years and shall be made to the University of Hawaii at Hilo, with subsequent grants or contracts being to a four year, fully accredited public institution of higher education.

138. The Senate amendment directs demonstration projects be made "with attention to the emotional and psychosocial needs" of gifted and talented students and their families.

The House bill gives a priority to early identification of such students.

The House recedes with a clarifying amendment. The conferees wish to explain the use of the term "psychosocial". Gifted and talented children may respond to environmental situations in a way that is different from other children, which can create psychological problems on the part of the gifted and talented child. Problems of this nature can prevent a child from reaching his or her potential if they are not recognized and treated.

139. The Senate amendment, but not the House bill, adds "psychosocial and developmental activities" to authorized activities, and specifically mentions "including, but not limited to" demonstrating and exploring the use of the Native Hawaiian language and exposure to Native Hawaiian cultural conditions".

The House recedes. See note 138.

140. The Senate amendment, but not the House bill, authorizes leadership programs to replicate successful programs to "other Native American peoples".

The House recedes.

141. The Senate amendment, but not the House bill, includes families.

The House recedes with an amendment. See note 138.

142. The Senate amendment, but not the House bill, directs the Secretary to facilitate the establishment of a national network of Native Hawaiian Gifted and Talented Centers, whose information will be readily available for the educational community at large.

The House recedes.

143. The House bill, but not the Senate amendment, limits administrative costs to not more than 10% of the funds appropriated.

The Senate recedes with an amendment deleting the term "10 percent" and substituting in lieu thereof "7 percent".

144. Similar provisions—different language for handicaps.

The Senate recedes.

145. Similar provisions. The Senate amendment requires that activities be consistent with Part B of the Education of the Handicapped Act and that activities "hold reasonable promise of improving the provision of special education and related services", while the House bill uses the phrases "hold reasonable promise of making substantial progress toward meeting the educational needs". Different definitions for handicapped.

The House recedes.

#### TRIBAL COLLEGES AND MISCELLANEOUS PROVISIONS

146. The Senate amendment, but not the House bill, amends the Navajo Community College Act to specifically list the expenses to be included in the annual computation by the Secretary of the amount authorized to be paid by the Federal government to the Navajo Community College for programs.

The House recedes.

147. The Senate amendment, but not the House bill, amends the Tribally Controlled Community Colleges Act of 1978 and the Navajo Community College Act to require the Secretary to use the method of fund disbursement used in FY 1987 in making payments to those schools, and states that interest earned on such funds shall be the property of the College and shall not be earned on such funds shall be the property of the College and shall not be taken into account when determining any Federal payments of eligibility.

The House recedes with an amendment prohibiting the accumulation of the funds so obtained.

148. The Senate amendment, but not the House bill, specifically amends the Navajo Community Colleges Act to provide authority for funding operations and maintenance costs, costs for major capital improvements and for other purposes. Also exempts any interest earned on any Federal payments from any computations of eligibility or amount to which the school is entitled under any Federal program. Funds must be invested in Federal bonds.

This note is repetitious and a mistake.

149. The Senate amendment, but not the House bill, amends the Navajo Community College Act and the Tribally Controlled Community Colleges Act to allow funds paid to a school under these Acts to be used as matching funds for other Federal programs.

The House recedes.

150. The Senate amendment, but not the House bill, limits the ability of the Secretary to remove from the general assistance rolls any student at a tribally controlled community college or other institution of higher education. Limits the funds which can be considered in computation of general assistance. The provision does not amend any requirement of general assistance.

The House recedes with an amendment allowing Adult Vocational Education funds to be used for matching purposes, in the same manner and to the same extent, as funds under the Tribally Controlled Community Colleges Act.

151. The Senate amendment, but not the House bill, authorizes the Secretary to permit the use of Federal facilities, land and equipment by tribal, student and other non-Federal organizations, to the extent it does not interfere with their purpose. User fees may be charged and credited to the appropriations or fund from which any expenses incurred were paid. This authority is in addition to any other authority.

The House recedes with an amendment.

152. The Senate amendment, but not the House bill, includes Congressional findings supporting a White House Conference on Indian Education.

The House recedes.

153. The Senate amendment, but not the House bill, directs the President to call a Conference no earlier than Sept. 1, 1989 and no later than Sept. 30, 1991. The purpose of the Conference is to consider the feasibility of establishing an independent Board of Indian Education and to make other recommendations for the improvement of Indian education programs.

The House recedes.

154. The Senate amendment, but not the House bill, sets out the composition of rep-

resentatives for the Conference, including tribal, B.I.A., education, and other representatives with special expertise. The President, the Speaker and the President pro-tem shall each choose 1/3 of the participants. 1/3 shall be currently active educators from Indian reservations, 1/3 educators from urban areas with large Indian populations, 1/3 Federal and tribal officials, and 1/3 Indians (including non-recognized Tribes).

The House recedes.

155. The Senate amendment, but not the House bill, includes administrative provisions for the Conference, including the assignment of personnel, establishment of a Task Force to coordinate the Conference, choice of a Task Force Director and the provision of Federal cooperation and coordination for support. The activities of the Task Force are listed, including the provision of grants to States and tribes to allow them to prepare for, and provide for the preparation of, such materials as may be necessary.

The House recedes with an amendment clarifying that the appointees must have experience in Indian education programs, not just issues, and stipulating that at least one person appointed by the Secretary of the Interior must be experienced in dealing with the Congress and tribes and outside organizations. This is to facilitate exchanges between all parties interested in this Conference and recognizes the specialized knowledge needed for this task. It is also strongly recommended that the Secretaries choose people who have worked with personnel and programs within the other Department.

156. The Senate amendment, but not the House bill, contains provisions on the report and the recommendations of the Conference, to be submitted to the President, and then transmitted, along with Presidential comment, to Congress.

The House recedes.

157. The Senate amendment, but not the House bill, establishes an Advisory Board to assist and advise the Task Force on the conference. The makeup of the Advisory Board is set, with the input of the Indian community and the control of the President, the Speaker and the President pro-tem. Other administrative provisions relating to compensation are set out.

The House recedes.

158. The Senate amendment, but not the House bill, authorizes the Task Force to accept gifts for immediate disbursement in support of the conference.

The House recedes.

159. The Senate amendment, but not the House bill, authorizes such sums as may be necessary for the conference for FYs 1988, 1989 and 1990.

The House recedes.

#### TITLE VI—GENERAL PROVISIONS STUDIES

The conferees have agreed to create a separate section in the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 which highlights the numerous research and evaluation studies requested by Congress. The intent is to clearly signal to the professional research and evaluation community that Congress considers the contribution of research as critical not only during the reauthorization proceedings but also throughout the period during which the legislation is in effect.

Policy decisions by the Congress depend upon the latest scientifically derived data together with a thorough understanding of research and evaluation findings. The conferees want to emphasize that they intend to take a more active oversight role and to work with the Department of Education in

monitoring these research and evaluation studies.

Federal requirements for research, studies and reports are generally included; requirements for similar activities at the State and local level, except when they are to result in a Federal report, have been excluded. Requirements for pilot or demonstration projects, evaluations, and development or dissemination activities have been excluded, except when they are to result in a Federal report. The National Assessment of Educational Progress requirement for the assessment of student performance in specific subject areas, as revised by the Senate, has been excluded because the program intent appears to be similar to current law; other House and Senate provisions for the National Assessment have been included.

*Effective Schools Study:* The conferees have agreed that the data collection for this study should include, but not be limited to the following guidelines:

I. Characteristics of students in effective schools programs:

- (1) Sex.
- (2) Race/ethnicity.
- (3) Age.
- (4) Limited English speaking.
- (5) Receiving services for limited English speaking.
- (6) Public assistance, as measured by receipt of a free or reduced lunch program.
- (7) Enrollment in Chapter 1 program.
- (8) Receiving special education services for the handicapped (P.L. 94-142).

Most of these data elements are customarily collected by the schools and therefore should not represent an appreciable burden.

II. School characteristics:

- (1) Staff numbers (professional/support).
- (2) Teacher characteristics:
  - (a) Sex.
  - (b) Race/ethnicity.
  - (c) Years of teaching experience.
  - (d) Education (degree).
  - (e) Salaries.
  - (f) Teacher turnover.
- (3) Expenditures on staff development.
- (4) Student/Teacher ratio.
- (5) Student turnover (average enrollment length).
- (6) Expenditures per pupil.
- (7) Existence of school improvement programs in addition to effective schools programs, e.g., State mandated curriculum changes, mentor teacher programs, remedial programs.
- (8) Existence of gifted and talented programs.

Schools generally have such data, although some may not have analyzed them. All the items are desirable, but if a few are too costly or difficult to obtain they should not be required by the Secretary of Education.

III. Program description:

- (1) Program objectives.
- (2) Amount of funding.
- (3) Activities.
- (4) Major problems encountered.
- (5) Length of program period.
- (6) Evaluation measures.

IV. Program outcomes:

- (1) Intermediate outcomes (school climate measures):
  - (a) Hours of instruction.
  - (b) Tardiness.
  - (c) Student absenteeism/attendance.
  - (d) Teacher absenteeism/attendance.
  - (e) Number of suspensions.
  - (f) Parent satisfaction.
  - (g) Staff satisfaction.
  - (h) Student satisfaction.
- (2) Student achievement outcomes.
  - (a) Test scores on at least reading and mathematics at given grade levels and for individual students over time (i.e., cross-sectional and longitudinal information). Such scores should be provided by race/ethnicity, socioeconomic status, and special program status (e.g., Chapter 1):
    - (i) Standardized norm-referenced tests (tests which allow comparison of local school achievement scores to the national norm at various grade levels). Students should be traced for a minimum of two years.
    - (ii) Standardized criterion-referenced tests (tests which all the youth are expected to pass).
    - (b) College entrance examinations results, such as for the Scholastic Aptitude Test and American College Testing.
    - (c) Student promotion/retention.
    - (d) Percent of youth going to college:
      - (i) 4-year schools.
      - (ii) 2-year schools.
    - (e) School completion rates.
    - (f) School dropout rates at various grades.
    - (g) Return rates of dropouts.

Items (b) through (g) should be separately reported by race/ethnicity.

#### GENERAL PROVISIONS

1. The House bill differs from the Senate amendment in that it indicates of *chapter 1 of this Act*.

The Senate amendment indicates of *chapter 1 of title I of this Act*.

2. The House bill differs from the Senate amendment in that it indicates *only to the extent OR in such amounts as are provided in appropriation Acts*.

The Senate amendment indicates *only to the extent AND in such amounts as are provided in appropriation Acts*.

3. The House bill indicates that this Act shall take effect October 1, 1987.

The Senate amendment indicates that this Act shall take effect October 1, 1988. The Senate amendment, but not the House bill, includes a "special rules" provision.

The House recedes with an amendment making the effective date July 1, 1988.

Mr. STAFFORD. Mr. President, as I mentioned on the floor during consideration of S. 373 by the full Senate, the adoption of the amendment to the Communications Act of 1934 offered by Senator HELMS is obviously severable from the other provisions of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 should court actions be brought concerning the Helms amendment.

Furthermore, we included language in the original Senate committee report that if any provisions of S. 373 or application thereof to any person or circumstance is held invalid, the remainder of the legislation and the application of such provision to other persons or circumstances shall not be affected thereby. This language would most certainly hold for H.R. 5.

To my mind, our Federal investment in elementary and secondary education is a critical investment in the future well-being of our economy and our society. I would urge my colleagues to swiftly approve this legislation so that we may continue to lay the groundwork for the future.

Mr. KENNEDY. Mr. President, I rise to underscore my strong support for the legislation before us today.

I am especially pleased that this legislation has been named in part after

my long-time friend and colleague Senator STAFFORD. Senator STAFFORD's public service career is long and distinguished: deputy attorney general and attorney general of Vermont, Lt. Governor and Governor of Vermont and a Member of the House of Representatives. For the last 18 years, however, he has been a Member of this body. Like all of us who have served with him, I value Senator STAFFORD's wisdom and counsel on the full range of issues that come before the Senate. It is, however, his work on education and environmental issues that will be his greatest legacy. The Washington Post praised Senator STAFFORD's contribution when the Senate approved S. 373, and I would like to have that editorial included as part of my remarks. I wish Senator STAFFORD a happy and fulfilling retirement, but I am sorry to see him leave the Senate.

Mr. President, one of Senator STAFFORD's legacies is that there is no dispute that a solid education system is essential for this country's economic growth and social progress. While most investment in education comes from the State and local levels, the Federal Government has an important leadership role to play. This role includes ensuring that the door to a quality education is open to everyone, and guaranteeing that educationally and economically disadvantaged children get the extra help they need. The Federal role also includes sponsoring efforts to measure the Nation's progress, so that we know how we are doing and where we need to improve. And it encompasses encouraging innovation of promising new ideas, and dissemination of proven programs.

The legislation we are considering today fulfills each of these roles. It contains the reauthorization of over a dozen major Federal education programs affecting elementary and secondary school students. It also authorizes some new creative and important education programs for the first time.

I would like to comment on a few of the programs in particular.

#### THE FUND FOR THE IMPROVEMENT AND REFORM OF SCHOOLS AND TEACHING

This bill includes my proposal to create a fund for the improvement and reform of schools and teaching [FIRST]. We know that some of the best ideas for educational reform come from the teachers and school building administrators who deal with success and failure on a daily basis. The Federal Government has an innovative grant-making organization in postsecondary education—the fund for the improvement of postsecondary education [FIPSE]. With this bill, we will establish a companion fund to sponsor innovative and reform-oriented projects to improve elementary and secondary education.

This fund will make small, action-oriented grants to States, local school districts and individual schools to provide the risk capital needed to launch

locally designed projects that meet local education needs. In making awards, priority is to be given to projects that benefit schools with below-average performance and that use incentives to accomplish specific goals—such as decreasing the dropout rate or improving test scores. The Senate Labor and Human Resources Committee heard testimony on October 5, 1987, about the use of incentives in education. The use of incentives and rewards has been tested by some school districts with promising results. This proposal will provide funds to try these programs more widely.

#### BILINGUAL EDUCATION

H.R. 5 combines the best provisions of the House and Senate bills regarding bilingual education. The legislation incorporates numerous technical changes contained in the House bill. These changes are designed to overcome problems—some inherent in the statute, others associated with the Department of Education's administration of the program—which detract from the program's effectiveness.

Inclusion of the Senate bill's new funding reservations in H.R. 5 accommodates the Education Department's quest for greater funding flexibility without mandating increased spending for monolingual instructional programs. This enhanced funding flexibility should be exercised in a responsible fashion, and I urge both the Department of Education and my colleagues on the Senate and House Appropriations Committees to allocate nonreserved funds to those part A programs which, on the basis of objective program evaluation and research data, are shown to be most effective in helping limited-English-proficient students achieve academic success. In this regard, I am troubled by the fact that the Department of Education currently provides only two grants, amounting to less than one-quarter of 1 percent of all part A grant funds, for two-way developmental bilingual education programs. Locally funded two-way bilingual education programs have proven effective in meeting the second-language learning needs of both limited-English-proficient students and monolingual-English students in a positive, integrated educational environment. These include several two-way bilingual programs in my own State at the Mackey Mosaic School in Boston, the Amigos Program in Cambridge, La Escuelita Agueybana Day Care Center in Boston, and Creciendo Juntos in Lawrence. Programs like these deserve additional Federal support, support made possible under the bill's new funding reservations. The legislation does not disturb the existing reservation of one-quarter of all Bilingual Education Act funds for training programs and activities. The lack of professionally trained teachers and school personnel remains the greatest obstacle to providing effective instruction to limited-English-proficient students. This is an obstacle the

Federal Government can and must help remove.

Finally, the legislation incorporates provisions from the Senate bill requiring a comprehensive academic evaluation of students who are retained in transitional bilingual education and special alternative instructional programs for more than 3 years. I believe that the student evaluation requirement represents sound educational practice and does not infringe on the prerogatives of local school districts. The legislation does not prescribe a specific period of enrollment for students in programs assisted under the Bilingual Education Act. Local school personnel and parents are best able to determine when students should be enrolled in or exited from any instructional programs.

#### COMPREHENSIVE CHILD DEVELOPMENT CENTERS ACT

I am particularly pleased that the legislation includes the Comprehensive Child Development Centers Act [CCDC]. CCDC allows the establishment of between 10 and 25 centers to provide early, continuous, and comprehensive supportive services for economically disadvantaged children, beginning with prenatal care and continuing until they enter school. Studies have shown that early intervention in the lives of at-risk children yields impressive results, enhancing their physical, social, emotional, and intellectual development. Families benefit as well from the support provided by such programs.

I want to emphasize that it is critical that services be continuous. A 5-year commitment is necessary so that children who become involved in the program as infants can continue their positive growth by receiving appropriate development services until they enter public school. Fuel funding in each year's appropriation process is essential to achieve the full benefits that CCDC promises. Lack of stable funding and inconsistent political support can bring about the quick and sure demise of this demonstration effort. It is our strong conviction that no project should be undertaken without a 5-year commitment.

#### NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

To help get better information about the quality of American education, this bill authorizes an expansion of the National Assessment of Educational Progress [NAEP]. NAEP is a federally funded testing program that provides evidence about the academic performance of 9-, 13-, and 17-year-old schoolchildren. For 20 years, NAEP has provided nationally and regionally representative data on how well our students are doing in math, reading and writing.

The expansion of NAEP authorized by this bill will increase the number of subject areas that are assessed, increase the frequency of the testing, and make possible the collection of State representative data. More specif-

ically, this bill will provide for the assessment of reading and mathematics every 2 years, writing and science every 4 years and history/geography every 6 years. In addition, the bill will allow States to gather the data necessary to compare themselves to other States and the Nation as a whole. I believe that these provisions will help States decide where their schools need improvements.

I wish to emphasize that this provision is not merely intended to provide a score card so that the States may be ranked on a basis of standardized test scores. What is authorized in this bill is a demonstration so that we may see how this idea works. At the conclusion of the 1990 and 1992 assessments the Commissioner of Education Statistics is to conduct an independent study to test the viability and feasibility of this approach. I also wish to emphasize that under no circumstances is this proposal intended to allow States to rank, evaluate, or compare local schools or school districts.

#### IMPACT AID

The impact aid reauthorization includes a small provision that is very important to many districts in Massachusetts and around the country. This provision prevents the Department of Education from eliminating payments for children residing in section 8 housing, or asking for repayment of impact aid funds paid out for such children in previous years. Many districts were told by Department field representatives that section 8 housing was eligible property regardless of who owned the housing. Indeed, in some States, districts were encouraged by Department officials to be sure that all section 8 children were counted. Now the Department has changed its mind and wants the money back. The Department's efforts to stop payments for these children is contrary to past policy, congressional intent, and good public policy. For many districts, being forced to repay, in some cases, millions of dollars already spent, would pose tremendous hardship. The provision we have included in the reauthorization will restore payments to these districts at a level consistent with previous impact aid assistance. This is particularly important for districts such as Boston, Worcester, Holyoke, Chelsea, and Chicopee that would otherwise lose their "super B" status.

Finally, I share the strong concern of my Senate colleagues that we must do everything within our power to limit the availability of obscene messages over the telephone. However, I am concerned, as are others, about the constitutionality of the dial-a-porn provision reinserted by the House in lieu of the language agreed to by the conferees. This is a complex constitutional issue which the courts must now decide.

This omnibus package has been put together with very strong bipartisan and bicameral support and coopera-

tion. The members of the Education Committees in both Houses deserve congratulations and commendation for this strong package. I wish to especially acknowledge the work of Senators PELL and STAFFORD, the chair and ranking minority members of the Education Subcommittee. I also wish to recognize several staff members who have worked tirelessly to put this legislation together: David Evans, Ann Young, and Sarah Flanagan of Senator PELL's staff; Ellin Nolan, Barbara Fox, and Becky Rogers of Senator STAFFORD's office; Bobbie Dunn from Senator HATCH's office; Buddy Blakey from Senator SIMON's office; and Amanda Broun, Shirley Sagawa, Rusty Barbour, and Terry Hartle from my own staff.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Dec. 4, 1987]

SOLID SENATOR

Those who lament the decline of the Senate will soon have further cause. Robert Stafford of Vermont is retiring. The Senate will be both a louder and a lesser place for his departure.

Sen. Stafford, now 74, has spent his entire adult life in public service and not lost sight of what that term means. His career has been the old-fashioned, orderly kind, proof of the virtues of unhurried apprenticeship. He was prosecutor, state attorney general, lieutenant governor, governor, then spent 10 years in the House before his 15 in the Senate.

Too often the modern senator seems to be a telegenic wonder with an attention span measured in nanoseconds—all here, no tortoise. Sen. Stafford is by contrast substantive, unassuming, patient and effective. He is not an ink hound. He has actually been known to pass a bill before its deadline.

His areas of greatest interest have been the environment and education. In the six years from 1981 to 1986 when the Republicans controlled the Senate, he was chairman of both the environment committee and the education subcommittee. He remains the ranking Republican on each.

Environment and education were two of the areas in which the early Reagan administration exhibited its greatest revolutionary zeal. You remember James Watt. You may also remember the president's proposals, some of which sadly continue to be made, to slash federal aid to higher education more or less in two.

Sen. Stafford quietly helped to stave off the craziness. Administration efforts to hollow out the major environmental statutes in the name of deregulation were turned aside. For a while, environmental policy was a nasty draw. More recently, some of the protective statutes have actually been refreshed and strengthened. The senator from the Green Mountain State played an important part in this turnaround. He did the same in education. Last year, his last as chairman, Congress reauthorized and secured the basic forms of aid to higher education. This year it is doing so at the elementary and secondary levels. The elementary and secondary bill passed the other day, 97 to 1. The vote is a tribute to a climate that Sen. Stafford helped produce. The Senate named the bill after him.

Sen. Stafford helped to save something else in the Reagan years. By virtue of the efforts he and others made, there continues to be a room in his party for its moderates.

When quiet men like Robert Stafford go, they are missed.

Mr. STAFFORD. Mr. President, I rise today in support of H.R. 5, "the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988." I am honored to share the name of this bill with my good friend and colleague from the House, Congressman AUGUSTUS F. HAWKINS. Mr. HAWKINS has served in the House of Representatives for 26 years. During that time, he has distinguished himself as a statesman and as a leader known for his dedication to providing high quality education to all our citizens. For more than 3 years, he has served as the chairman of the House Education and Labor Committee and as the chairman of the Elementary, Secondary, and Vocational Education Subcommittee. He has worked tirelessly to craft sound legislation and generations of Americans are better off today because of his efforts.

At a time when our Nation's attention is on the need to compete in a world market of increasing technical complexity, this landmark legislation reauthorizes our Nation's most vital education programs. In order for our Nation to flourish, all our citizens must be educated, literate, productive members of society. We cannot afford to lose the talents of one American. All children must leave school with the skills they need to be full participants in our democracy. H.R. 5 addresses these pressing concerns.

H.R. 5 is a national investment in education. Investing in quality education is a wise and profitable use of Federal funds because it is an investment in our future. I believe the strength of our Nation lies ultimately in our children, for they are our most precious resource. No Federal education program has done more for disadvantaged children than the Chapter 1 Program which is reauthorized in this bill. Chapter 1 provides compensatory education in reading, mathematics, and language arts for the neediest children.

Children who qualify for chapter 1 are at greatest risk of failing in school, becoming dropouts, and eventually joining the legion of the hard-core unemployed. Over the last 22 years, chapter 1 has provided supplementary instructional services to millions of disadvantaged youngsters. In the 1985-86 school year, 4.5 million children were served by this program. And we know chapter 1 is successful. Children who receive instruction through this program score better on standardized tests than eligible children who have not participated in chapter 1. The reauthorization of chapter 1 strengthens this vital program and puts into place the means for assuring high quality instruction to all eligible children.

Also included in H.R. 5 is a provision to improve the achievement of low-income, low-achieving high school stu-

dents. Secondary school programs under title I serve students who have the greatest likelihood of becoming school dropouts. Keeping children in school and making it possible for those who have already dropped out to reenter high school is a wise use of Federal resources.

We must not settle for mere school attendance. All children, particularly disadvantaged children living in rural areas, must have access to high quality instruction. Our Nation's rural schools face a unique challenge. Transportation, program coordination, and resource allocation are particularly crucial in sparsely populated areas where children live great distances from their school. The rural education opportunities provision under title I establishes 10 rural assistance centers whose mission is to help States and local school districts improve the quality of education in rural schools.

Another program which has done much to improve the quality of education in our country is chapter 2 under title I. Chapter 2 is unique because it gives local school districts the flexibility to make decisions about the kind of improvement most needed in their schools. As a consequence, chapter 2 has been highly successful encouraging innovation and program improvement. In keeping with the aim of educational excellence, chapter 2 also includes programs which reach out into the education community in creative ways. Distributing inexpensive books as a reading motivator, encouraging arts in education and recognizing exemplary schools are examples of broad-based, innovative programs. Such programs make a major contribution to our Nation's education system and it is disadvantaged children who stand to benefit the most.

As you know, I will not seek reelection to another term in the U.S. Senate. In light of this, many friends and colleagues ask me what I have found most rewarding about being a Senator from the State of Vermont. My work on the Education, Arts, and Humanities Subcommittee and on the Environment and Public Works Committee have been among the most rewarding challenges of my congressional career. My service on these committees has allowed me the opportunity to establish Federal policy and Federal programs which contribute to an improved quality of life in America.

No greater challenge is before the Congress and the Nation than developing the talents of our citizens. Each generation must take up this task anew, for the question of maximizing human potential is basic to the fabric of democracy. To the mind of this Senator, H.R. 5 takes up this challenge and does so to the benefit of all. It provides a means whereby the Federal Government joins hands with State and local education agencies. H.R. 5 defines an effective Federal role and as such serves the best inter-

ests of the children and adults of our Nation. A vote for H.R. 5 is a vote for better educated, better prepared, more productive citizens in tomorrow's workplace.

Let it be said that on our watch the children of our Nation, particularly the neediest children, were well served. I urge my colleagues assembled here today to join me in support of this important legislation.

Mr. WILSON. Mr. President, during Senate consideration of the Omnibus Elementary and Secondary Education Act last year, an amendment was offered and accepted by unanimous consent which had I been afforded the opportunity to address its content prior to passage would have resulted in a spirited debate between the Senator from Ohio and myself.

Specifically, the amendment in question required the Secretary of Education to postpone a final determination in the grants process to select the award recipient of the National Center for Research in Vocational Education Award, pending a General Accounting Office [GAO] review of the department's selection process. I am pleased that the conferees on H.R. 5 have chosen not to take this type of action. For the benefit of my colleagues who have not been directly involved in this matter, I would like to provide some background information.

In 1984, Congress passed the Carl D. Perkins Vocational Education Act. Under this act, the National Center for Research in Vocational Education was reauthorized to design and conduct research and developmental projects in the area of vocational education. As a result of problems experienced in a previous competitive process for this particular grant, Congress included specific requirements within the law to offer guidance to the Secretary in selecting future award recipients.

Utilizing these guidelines, the department began a painstaking process to select the recipient of the center grant, including the careful selection of a panel to review all applications. After the formal announcement of the grant process in November 1986, applications were submitted by the University of California at Berkeley, Northern Arizona University, and Ohio State University. These applications were reviewed, site visits were conducted, and on January 4, 1988, it was formally announced that Berkeley had been selected as the clear winner of the competition.

Last year, it became known that Berkeley had been tentatively selected prior to the official announcement and coincidentally, before Senate consideration of the elementary and secondary education reauthorization measure. Hence, an amendment was offered to H.R. 5 under the guise of fraud to prevent a final award to Berkeley.

For those of my colleagues with more than a passing interest in this

matter, I would recommend the GAO's report on the department's grants process (Report No. 88-56). Since the department was barred from including remarks within the GAO's written report, I ask unanimous consent that a copy of the Education Department's response be included at this point in the RECORD. After reviewing both documents, I am convinced that the Department adhered to congressional guidelines.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF EDUCATION,  
Jan. 26, 1988.

FRED YOHEY,  
Group Director, Elementary and Secondary Education, General Accounting Office, Washington, DC.

DEAR MR. YOHEY: On January 4, 1988, you and two members of your staff, Debra Eisenberg and Sandra Baxter, provided Department of Education officials with a briefing on the outcome of GAO's review of the Department's decision-making process in awarding a grant for the National Center for Research in Vocational Education.

At the briefing, you indicated that the grant award process had not violated any statutes or regulations and you did not recommend that the competition be reopened. Furthermore, you stated that your staff had found "nothing arbitrary or capricious" about the process the Department used in making the award. Nonetheless, you identified five areas of general concern. We did not respond to the stated areas of concern during that briefing as it was our understanding that in the normal GAO audit process, the Department would have an opportunity to respond to a written draft report. But since you are providing only a final report, and not allowing us to respond in writing to a draft, we are providing you with a summary of the Department's analysis and response to the concerns mentioned in the January 4 briefing.

It is important to note that the grant award process for the National Center for Research in Vocational Education was conducted in strict compliance with an Application Review Plan for recompetition which described every major step of the process and which was available for your review. Procedures were developed for screening ineligible applicants, conducting a panel review of the technical merit of each application, ranking of applications using standardized scores, and conducting site visits of the top three applicants. This plan was prepared by the Office of Vocational and Adult Education (OVAE) and approved by the Department's Grants and Contracts Service (GCS) on July 1, 1987, prior to the submission of applications. Approval of an Application Review Plan is part of the normal Departmental review process. Departmental policy requires that a plan be approved for every discretionary grant program.

Furthermore, while GAO did express a general concern about some aspects of the competition process, as discussed below, we believe it is clear that the competition was not only in accordance with all legal requirements and internal Department procedures, but that it was also a process that was fair and neutral with respect to all applicants. In particular, we also believe that the concerns you have raised did not prejudice any particular applicant during this competition.

Let me first identify each area of concern that you cited, briefly summarize your find-

ings, and then provide you with a summary of the Department's analysis.

#### READER QUALIFICATIONS

The Carl D. Perkins Vocational Education Act requires that, in making the grant award for the National Center for Research in Vocational Education, the Secretary shall act with the advice of a panel composed of individuals appointed by the Secretary who are not Federal employees and "who are recognized nationally as experts in vocational education administration and research." (Sec. 404(a)(2)).

The Department utilized a long-standing administrative procedure for selecting non-Federal reviewers. OVAE staff, who are themselves nationally recognized in the field of vocational education, identified experts to serve on the panel. The staff submitted a list of potential panel members to the Acting Assistant Secretary. The Acting Assistant Secretary requested that the list include the panel members who had previously served on the panels that reviewed the Fourth Year Continuation Application for the National Center and the Planning Grant Applications for the National Center. Reviewers were selected from this list and from the personal professional knowledge of the Acting Assistant Secretary. The Acting Assistant Secretary, of course, was in an excellent position to judge whether individuals are national experts in this field and, as the Federal official primarily responsible for administering this program, his judgment should be given great deference. Furthermore, if you review the resumes of the reviewers, you will find that each has impressive vocational education credentials.

In your review of whether or not the panelists could be considered national experts, your method of assessment of national expertise placed sole emphasis on name recognition. You quickly polled representatives of five national organizations and drew conclusions from a very small group in a large field. In a field as broad as vocational education, there are many nationally recognized experts who might not be known to certain parts of the vocational education community. Therefore, the Department believes that the GAO's method of assessing reader qualifications is highly questionable. We believe the panelists who served as reviewers in this competition are recognized nationally as experts in vocational education administration and research.

#### SITE VISITS

You indicated that the three site visits by the panel were not totally comparable inasmuch as tours of the facilities were conducted at Ohio State University and Northern Arizona University, but not at the University of California at Berkeley, thereby allegedly allowing more time for the question and answer session at Berkeley.

The site visits were conducted in accordance with the aforementioned approved Application Review Plan and therefore the treatment of each applicant was eminently fair. Each site visit was to be one day in length consisting of a briefing by the project director and/or his staff followed by a period during which panel members could ask questions of the project director and his staff. Each project director was sent an identical letter which indicated that it would be appropriate for him to expand, supplement or summarize any salient points raised in the application during the one to two hour briefing. While project directors were also advised that taking panel members on the tour of their facilities would be appropriate, it was also suggested that they might wish to show panel members slides, photographs and/or blueprints of additional

off-site facilities. Therefore, it was left to the discretion of each applicant to choose how he would organize this allotted time. The fact that the University of California at Berkeley chose to show panel members a slide presentation during the briefing session rather than conduct a facilities tour does not deviate from the approved Application Review Plan or from the instructions sent to the Project Directors.

#### SUBSTANTIAL FINANCIAL CONTRIBUTION

The Carl D. Perkins Vocational Education Act requires that every applicant present evidence that it will make a substantial financial contribution towards the operation of the National Center. In that the law does not define what constitutes substantial financial contribution, Department officials relied upon their professional judgment and experience for assessing the applicant's contribution.

The assessment of financial contribution was reviewed as an eligibility requirement. (See 34 C.F.R. 417.2). All three applications were found to be eligible and subsequently forwarded to the panel. Points were not assigned in the evaluation process based on the amount of the financial contribution, because the published selection criteria in the program regulations do not contain this as a criterion.

In its application, the University of California at Berkeley indicated an annual contribution of approximately 10 percent of the annual \$6 million award from the Department. The Department maintains that an annual contribution by the grantee of over 10 percent is clearly substantial.

#### SCORES

In the briefing, you stated that panelists knew the scores and rank order of each of the applications prior to the site visits. If this is true, a panelist, not OVAE, ranked the scores independently, not in the supervised group process, and did so based on raw scores, not standardized scores. Nevertheless, we have no knowledge that this indeed took place.

The approved Application Review Plan outlined the procedures to be utilized for the panel review for technical merit, procedures for ranking the applications using standardized scores, and procedures for the site visits. These procedures were followed by OVAE staff and panelists. For the panel review conducted August 24-25, 1987, after a morning orientation session on the 24th, panel members began to read and score each criterion of each application independently and without discussion. An OVAE staff member monitored these sessions at all times. When an application was completed by a panel member, the Technical Review form was collected from that member and the scores were checked for accuracy. When the review and scoring were completed on August 28, 1987, on all applications, an OVAE staff member conducted a discussion during which the panel member who had given the highest score on a given criterion and the panel member who had given the lowest score explained their decisions and rationale. This is a long-standing OVAE practice used to ensure that important criteria have not been overlooked and that the review was comprehensive.

It is important to note one application is not scored against another. Each is reviewed independently, criterion by criterion. It is also important to note that no panelist changed a score as a result of the high/low score discussion and August 28, 1987. All materials were then collected by OVAE staff before the panelists left the room. Panelists had no further access to any materials including score sheets until the site visits.

The integrity of the review process was further maintained during the site visits. At the conclusion of each site visit, panelists were given the opportunity to rescore that application. This was in accordance with the procedures set forth in the approved Application Review Plan. Again, each panelist independently scored and reviewed the application, and at the end of each site visit, materials were collected by OVAE staff. Furthermore, no official Department ranking took place until the total process was completed, including all of the site visits, after which the raw scores were converted into standard scores by the Grants and Contracts Service Division and final rankings were computed.<sup>1</sup>

#### DIRECTOR AND CO-DIRECTOR

As a final point, you indicated in your review that the application of the University of California at Berkeley called for co-directors. The regulations at 34 C.F.R. 417.40 require that the Center have a Director.

Based on advice of counsel, it was determined that this was a minor technical issue which could be addressed during the negotiation process conducted by the Grants and Contracts Service Division. This determination was made in accordance with Departmental practice. Disapproval of Departmental grant applicants on the basis of minor technical issues of this nature might well result in a substantial decrease of qualified applicants and a resulting reduction in educational innovation and grant award competition.

It is also important to note that the issue of a Center Director is not included in the initial eligibility criterion and therefore can be resolved during the course of the negotiations process.

Finally, we appreciate GAO's recommendations on improving the grant competition process in the future. However, we believe that your report should clearly indicate that GAO did not find that the recent competition violated any statutory or regulatory requirements and that GAO does not recommend that the award be recomputed.

Sincerely,

BONNIE GUITON,  
Assistant Secretary.

Mr. WILSON. Since no glaring flaws were uncovered by the GAO after reviewing the national center grant selection process, the Secretary of Education awarded the center grant to Berkeley. Subsequently, Ohio State University, the previous grantee, filed suit against the Department in Ohio Federal District Court. Recently, a decision was reached by the Judge which, in my view, illustrates a complete lack of understanding of Federal grant procedures. I ask unanimous consent that a copy of the Ohio Federal District Court's brief, as well as Berkeley's response, be included in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

<sup>1</sup> The Application Review Plan had contemplated a preliminary ranking prior to the site visits to determine the top three applicants to be visited. However, since there are only three applicants, approval was sought and granted not to rank the applications at that time. Thus, only one official ranking was done after the total process, including the site visits, was completed.

[Case No. C2-88-0027]

UNITED STATES DISTRICT COURT—SOUTHERN  
OHIO DISTRICT

THE BOARD OF TRUSTEES OF THE OHIO STATE  
UNIVERSITY, PLAINTIFF V. U.S. DEPARTMENT  
OF EDUCATION, ET AL., DEFENDANTS

#### OPINION AND ORDER

This matter is now before the Court for final disposition of plaintiff's, the Board of Trustees of The Ohio State University (Ohio State), request for injunctive and declaratory relief against defendants, the U.S. Department of Education, the Secretary of the Department of Education and the United States of America (Secretary). This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1441 and 5 U.S.C. §702. The question presented is whether the Secretary complied with Section 404 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. §2404, as enacted by Public Law 98-524, and 34 C.F.R. Parts 75, 400 and 417, when he awarded a five-year, \$30 million grant to Berkeley for the operation of the National Center for Research in Vocational Education.

#### ADMINISTRATIVE PROCEEDINGS

On August 16, 1985, the Secretary announced in the Federal Register the procedures and criteria which would be used in the competition. 50 Fed. Reg. 33,287 (1985) (to be codified at 34 C.F.R. §417). On September 16, 1985, the Secretary announced the availability of planning grants for the stated purpose of assisting individuals, public or private agencies, organizations or institutions in developing innovative approaches for expanded activities of the National Center, and to increase the quantity and quality of applications for the National Center. 51 Fed. Reg. 32,882. On November 26, 1986, the Secretary solicited applications for the National Center that provided for an August 14, 1987 deadline. 51 Fed. Reg. 43,069 (1986). The solicitation provided that the applications were subject to compliance with the regulations in 34 C.F.R. Part 417 and The Education Department General Administrative Regulations, 34 C.F.R. Parts 74, 75, 77 and 78. On or before August 14, 1987, the Secretary received three applications for the National Center. The applicants were Ohio State, Northern Arizona University and a consortium arrangement under the guise of The University of California at Berkeley (Berkeley).

After the August 14, 1987, closing date for the National Center grant application, the Office of Vocational and Adult Education (OVAE) reviewed each application for eligibility under 34 C.F.R. §417.20. The OVAE was satisfied that each applicant met eligibility requirements. From August 24 through October 1, 1987, a panel of nationally recognized experts in the field of vocational education administration and research evaluated each application on the basis of the criteria contained in 34 C.F.R. §417.31. The panel reviewed each application and awarded points based on the following selection criteria: the high quality and effectiveness of the required services and activities; quality of the management plan; quality of the key personnel; institutional experience of the applicant; adequacy of the applicant's resources; adequacy of budget and cost effectiveness; and external relationships with interested and affected entities. 34 C.F.R. §§417.30-31. Prior to actual award of the grant, the Secretary engaged in negotiation with the applicant having the highest standardized score (Berkeley) in order to clarify their obligations under the grant. Following the negoti-

ation process Berkeley was designated the National Center on January 4, 1988.

#### JUDICIAL PROCEEDINGS

On January 8, 1988, Ohio State filed a complaint and a motion for a temporary restraining order and a preliminary injunction alleging that the Secretary's review of the grant applications and award of the grant violated statutory and regulatory requirements. On January 11, 1988, this Court held a hearing and granted Ohio State's motion for the temporary restraining order. On February 10-11, 1988, this Court consolidated the hearing of Ohio State's application for a preliminary injunction with the trial on the merits pursuant to F.R.C.P. 65 (a)(2). The Court recognized that this case is not the proper subject of a trial de novo, *Citizens To Preserve Overton Park v. Volpe*, 401 U.S. 402, 415-416 (1970). However, the purpose of the "consolidation" was two-fold: first, testimony was taken to determine whether equitable relief was appropriate; and second, to clarify and amplify the actions taken by the Secretary in order to determine if they were consistent with and followed the statutory mandate regarding the National Center.

#### JUDICIAL REVIEW

Initially, it is necessary for the Court to determine whether Ohio State is entitled to judicial review of the Secretary's action in awarding the grant for the National Center to Berkeley. The Secretary argues that the portion of the Perkins Act dealing with the National Center does not provide for any judicial review of Department of Education actions in regard to the selection of a grantee or the administration of the grant, in that other sections of the Act specifically provide for judicial review.

Judicial review of the Secretary's decision is governed by the Administrative Procedure Act, 5 U.S.C. § 551 et seq. The APA provides that the action of each authority of the government of the United States is subject to judicial review except to the extent that statutes preclude judicial review or agency action is committed to agency discretion by law. The APA provisions embody a presumption in favor of judicial review. The right to review is not to be denied absent clear and convincing evidence of contrary legislative intent. *Lubrizol Corp. v. Train*, 547 F.2d 310 (CA6 1976). The mere fact that 20 U.S.C. § 2404 makes no provision for judicial review while other sections of the Perkins Act specifically provide for judicial review is not clear and convincing evidence that Congress intended to preclude judicial review of the National Center grant process. Furthermore, the Secretary's discretion to authorize funding for the center has been severely restricted by the enabling act, 20 U.S.C. § 2404. For these reasons the Court determines that judicial review of the Secretary's action is entirely appropriate.

#### ANALYSIS—I

The declaratory and injunctive relief sought by Ohio State is available under 5 U.S.C. § 706, which provides that "the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." Additionally, "the reviewing court shall . . . hold unlawful and set aside agency action, findings and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The general rule of APA review is that the Court shall decide all relevant questions of law and interpret statutory provisions. See, *NLRB v. Hearst*, 322 U.S. 111 (1944). The Secretary's actions are entitled to a presumption of reg-

ularity and this Court is not empowered to substitute its judgment for that of the agency, *Overton Park*, 415-416 (1970). However, the presumption of regularity does not shield the Secretary's actions from a thorough, probing and in-depth review, *Id.*

In order to properly review the Secretary's actions, the Court is first required to determine whether the Secretary acted within the scope of his authority. *Id.*, at 415, quoting *Schilling v. Rogers*, 363 U.S. 666, 676-677 (1960). Thus, the Court must consider whether the Secretary properly exercised his authority to designate Berkeley as the National Center. The Secretary's authority to designate an entity as the National Center is derived in part from 20 U.S.C. § 2404.

The Perkins Act authorizes the Secretary to designate and fund a National Center for Research in Vocational Education after grant applications have been reviewed in compliance with 20 U.S.C. 2404, as enacted by Public Law 98-524. The Act provides for the establishment of a National Center which shall have as its primary purpose "the design and conduct of research and developmental projects and programs" in vocational education. 20 U.S.C. § 2404(b). The statute states in relevant part that:

(2) The Secretary shall provide support for the National Center through an annual grant for its operation. The National Center shall be a nonprofit entity associated with a public or private nonprofit university which is prepared to make a substantial financial contribution toward its establishment. The Secretary shall, on the basis of solicited applications, designate the entity to be the National Center once every five years, acting with the advice of a panel composed of individuals appointed by the Secretary who are not federal employees and who are recognized nationally as experts in vocational education administration and research.

(3) The National Center shall have a Director, appointed by the University with which it is associated . . .

20 U.S.C. § 2404(a) (2)-(3). The statute simply requires the Secretary, acting with the advice of national experts in vocational education administration and research, to fund a single National Center. The organization chosen as the National Center is required to be nonprofit, associated with a university that is prepared to make a substantial financial contribution towards its establishment and have a single Director.

#### A

Under 34 C.F.R. § 417.20, an applicant is eligible to be designated the National Center if: (1) the application is from a nonprofit entity associated with a university and (2) is prepared to make a substantial financial contribution towards the establishment of the National Center. The eligibility criteria did not address whether an application needed to provide for a single director as required by 20 U.S.C. § 2404(A)(3). The Secretary dismissed the statutory criterion as a "minor technical issue" that would be resolved in the negotiation process.

The Secretary's attempt to explain away the unambiguous statutory requirement is woefully inadequate. An issue is deemed substantial when it is addressed in the context of a statute—there is nothing minor when an issue concerns the intent of Congress as expressed in a statute. The articulated purpose of the negotiation process is to clarify the provisional awardee's obligations under the grant. Congress, clearly set out the minimum eligibility requirements in section (a) of the statute. The statutory language is clear, Congress specified that the National Center have "a Director." The Secretary was responsible for implementation

of 20 U.S.C. § 2404 and should have required that the applications provide for a Director. The Secretary's failure to make initial eligibility contingent upon statutory compliance is not in accordance with 20 U.S.C. § 2404(a).

#### B

Actually, the Berkeley application describes the Director position in terms of co-directors (Drs. Benson and Swanson) or co-principle investigators who, at the apex of the management hierarchy, are ultimately responsible for the entire Center. P. Ex. 14 at 40. Such an arrangement does not comply with 20 U.S.C. § 2404(a).

As the Court noted previously, the statute clearly requires a single Director. Such a construction does not allow for a co-directorship or any other similar arrangement. Apparently concerned with statutory compliance, the Secretary, during the negotiation process, asked Berkeley whether its National Center would have "one director." P. Ex. 15 at Management Q.1(a). In response, Berkeley stated that Dr. Benson would be the Director and Dr. Swanson would be an Associate Director. P. Ex. 16 at Management Q.1(a). The Secretary was satisfied with Berkeley's change of titles although it "did not change the substance at all." Tr. at 284. Dr. Benson testified that the change of title did not change his role in the National Center organization described in the application. Tr. 259. Dr. Swanson testified likewise. Tr. 310. This suggests to the Court that the change was merely to give the appearance of compliance when, in fact, there is in substance, two directors or co-directors of the project.

#### II

The Berkeley application was submitted pursuant to 34 C.F.R. 75.128. That regulation generally permits a group or consortium of eligible parties to apply for a Department of Education grant by designating one member of the group as applicant and including the consortium agreement with its application. The Berkeley application stated that it was a proposal from The University of California at Berkeley, The University of Illinois, The University of Minnesota, The Rand Corporation, Teachers College of Columbia University, and Virginia Polytechnic Institute and State University.

After thorough examination, the Court notes that the multi-volume Berkeley application does not include any contracts between institutions. When the Secretary requested copies of the subcontracts, during the negotiation process, Berkeley declined to provide subcontracts on the grounds that it had a policy not to draw up subcontracts prior to an award. P. Ex. 16 at Management Q.6(a). However, Berkeley did provide a "model of a subcontractual agreement which typifies the format utilized by the University of California at Berkeley" during the negotiation process. *Id.* The Secretary's actions were not in accordance with 34 C.F.R. 75.128(G).

#### A

Ohio State argues that the consortium arrangement contemplated by Berkeley is inconsistent with the 20 U.S.C. § 2404(a), in that the statute requires "the" National Center . . . to be associated with "a" . . . university. The plaintiffs contend that the Berkeley award violates that requirement by funding a group of six regional centers. The Secretary claims that the Berkeley application misused the term "consortium" because in reality the relationship between Berkeley and the five other institutions described by the substance of the application was a prime contractor-subcontract-

tor relationship which is permitted by 20 U.S.C. § 2404(b).

Plaintiffs attribute to Congress an intent to limit the Secretary's discretion to only fund one National Center which has one location as opposed to a National Center which is in fact a series of regional centers. The National Center was originally created in 1976 by 20 U.S.C. § 2401, as enacted by Public Law 94-482. The reasons for the action and the meaning of the exact text of the statute were explained when the statute was enacted:

The term "center" implies centrality and concentration of resources. Inherent in the concept is the *critical mass* of resources and interdependent functions to cost effectively and adequately serve the impact on vocational education. Problems of planning, coordination, and essential functions such as dissemination and information services are confounded if divided among several "national" centers.

During the House . . . hearings on the vocational education bill, testimony was presented and discussed relating to the single versus multiple centers concept. This same issue of center versus centers was raised and debated and not brought to a vote because of the strong support in the subcommittee and committee. Considering all the testimony presented, as well as related information collected directly by the House subcommittee, it was clearly substantiated that a single national center should be established which is selected on a competitive basis with the ability to directly, or through contracts with other public agencies, work on the solving of vocational problems of national significance. Each time the matter was discussed, the important need for providing a "critical mass" of resources in one center to provide national center functions as specified in the vocational education bill, was clearly established. Based on first, this highly stressed need, second, the fact that the federal government has not been capable of adequately supporting even one national center since 1985, and third, the extensive support from the practitioners and leaders in the field of vocational education for the single national center concept, the Education and Labor Committee derived the language stated in the House Bill.

122 CONG. REC. 11, 13379-80 (May 11, 1976) (Remarks of Rep. Mottl) (Emphasis supplied).

The 1978 statute specifically permitted the Commissioner of Education to award the National Center to an agency with multiple "locations, including contracts with one or more regional research centers." 20 U.S.C. 2401. That language was included to allow for regional research centers and other public agencies to be funded through the National Center. The Commissioner then used his discretion to fund a National Center in one location with no regional centers.

In 1984, the question of one National Center in one location rather than multiple locations was raised again. Congress resolved this question in favor of one National Center in one location. It deleted the provision for multiple locations and regional centers and presently permits a prime contractor-subcontractor relationship. Congress rejected Senate amendments to the Perkins Act that would have required that funding for vocational education research be divided among institutions, with no single institution receiving more than 20 percent of the available funding. H.R. Conf. Rep. 1120, 98th Cong., reprinted in 1984 U.S. Code Cong. and Admin. News 4154. Congress Committee observed that:

The Committee wishes to call attention to the fact that this bill continues the mandate for a national center for research in vocational education, which under the current legislative authority has provided a significant improvement to the vocational education field.

H.R. No. 612, 98th Cong., reprinted in 1984 U.S. Code Cong. and Admin. News 4112 (Emphasis supplied).

The intention is clear from the legislative history of the statute—Congress unequivocally mandated that one National Center in one location must be funded. However, Berkeley's application described what the terms of the consortium relationship would be and stressed the novelty of the "new organizational structure for the National Center." The application stated:

The conventional approach to a research center has been to locate all principal researchers in one place, creating a *critical mass* of individuals concentrating on a common set of topics, often around one intellectual leader. For the proposed National Center, however, this model is unworkable. We will replace the conception of the Center as a single institution, with personnel in one location, with a contractual relationship among six institutions . . . (P. Ex., at 37) (Emphasis supplied).

It is conventional wisdom that the management of several institutions may be more complex than the management of a Center located at a single institution. We recognize this potential difficulty, but we also believe that ease of management ought to be subordinate to fulfilling the mission of the National Center. Once this mission has been defined, and the necessity for a consortium of institutions established, then the task remaining is to devise a management structure that will enable that mission to be fulfilled effectively as possible . . . (Id., at 171) (Emphasis supplied).

Nevertheless, Berkeley insisted that the above described consortium arrangement was contractual in nature. Their application stated:

We are using the term "consortium" generically to describe our multi-institutional contractual arrangements. Berkeley is and will remain the central location for the Center and will have full and final responsibility for administering the Center's grant. (P. Ex. 14 at 170).

The Court disagrees, Berkeley's organizational model is clearly at odds with its disclaimer and with Congressional intent. In 1978 Congress determined that the efficiency and efficacy of the National Center required a "critical mass of resources" in one center. For the National Center, individuals comprise the prime resource for the purposes of vocational education research. Furthermore, in 1984, Congress rejected the idea that the mission of the National Center necessitated a consortium of institutions. Berkeley's application does not adhere to the clear intent of Congress. However, during the negotiation process, the Secretary instructed Berkeley to "delete all references to a consortium in order to reflect the fact that the grant will be supporting a national center and the five institutions with which it subcontracts." P. Ex. 15, at Management Q.5 (b). Berkeley agreed to do so. P. Ex. 16 at Management Q.5 (b). The Secretary's request is an admission which supports plaintiff's assertion that the Berkeley application was ineligible.

B.

Ohio State argues that Berkeley's financial contribution towards the establishment of the National Center is not substantial. The various contributions and concessions

from each institution listed in the Berkeley application total \$685,597. P. Ex. 14 at App. Vol. C, p. 17. Berkeley alone would contribute \$93,241. *Id.*

20 U.S.C. § 2404 mandates that the university associated with the National Center is to provide a substantial financial contribution towards its establishment. An application must describe the financial contribution the university will make towards the establishment of the National Center. 34 C.F.R. 417.20. Neither the statute nor the regulations define what constitutes a substantial financial contribution. The Secretary viewed the assessment of financial contribution as an eligibility requirement. Dec. Bonnie Guiton, at Attachment A, p. 4.

The Secretary concluded during the negotiation process that a larger proportion of the Berkeley contribution had to come directly from Berkeley rather than simply flow through Berkeley from the other institutions. Tr. 281. As a result, Berkeley agreed to pledge a direct annual contribution in excess of \$600,000. Tr. 237. These actions are admissions by the Secretary and Berkeley and support the conclusion that the Berkeley application was ineligible at the very threshold of this process.

C.

Ohio State contends that the Secretary's selection of the review panel violated 20 U.S.C. § 2404 in two respects. First, that the panel was not wholly comprised of individuals "recognized nationally as experts in vocational education administration and research." The plaintiff has pointed to nothing in the express language or legislative history of the Perkins Act which could provide the Court with parameters or guidance by which the Court could determine whether the appointment of the panelists violated the statutory provision that they be "recognized nationally as experts in vocational education administration and research." The determination of who qualifies as "recognized nationally as experts in vocational education administration and research" is a classic example of a determination committed to the discretion of an agency that has special expertise necessary to make a qualified judgment. Such a determination is beyond the competence of this Court and is not subject to judicial review. This Court will not substitute its judgment for that of the Secretary.

Second, Ohio State argues that the Secretary violated minimal standards of fairness to the applicants when he allowed two persons to be selected as panelists that had previous contact with the existing National Center. 20 U.S.C. § 2404 requires a panel composed of individuals appointed by the Secretary who are not federal employees and who are recognized nationally as experts in vocational education administration and research. The panelists also had to be unbiased and not have any affiliations with the grant applicants. Dec. John Pucciano.

The Secretary conducted a regular, annual review of the performance of the National Center, in 1986. This was prior to funding the Center for 1987. The review was conducted by a panel of five persons which included Donald Roberts. Also in 1986, the Secretary announced the availability of planning grants to assist potential participants in preparation for the 1987 National Center competition. The Secretary appointed a panel of five persons to review the applications which included Phillip Atkinson. In 1987, these same individuals, Donald Roberts and Phillip Atkinson, along with three others, were appointed by the Secretary to review the applications for the National Center Competition.

It is obvious that the Secretary did not follow informal guidelines when he selected Drs. Roberts and Atkinson. It is equally apparent that the doctors must \* \* \* their previous contacts with the existing National Center. The previous contact that the Doctors had with the applicants raises serious questions concerning their objectivity and open-mindedness and gives, at the very least, an appearance of impropriety. Such action by the Secretary is an abuse of discretion.

D.

Finally, Ohio State claims that the Secretary failed to have the panel review the pending Berkeley application. The Secretary contends that the action was harmless because none of the changes were significant under the seven criteria panelists applied. The Secretary's counsel clearly expressed the Secretary's view:

[I]t was none of the site reviewer's business, quite frankly, your Honor, whether or not there was a substantial contribution, whether or not there were co-directors, whether or not there was one national center.

at 209.

20 U.S.C. § 2404(a) mandates that the award of the National Center is to be based on application and requires the Secretary to act with the advice of a panel of nationally recognized experts in vocational education administration and research. It is obvious that the Secretary denied the panel an effective opportunity to review applications by permitting Berkeley to amend its application after panel review. Furthermore, the Secretary's position cannot withstand even cursory review of the criteria by which the panelists were to evaluate the applications. One of the most important criteria is "management", which accounted for 20% of the total score. In evaluating "management," the panelists were to examine:

- (i) The applicant's philosophy of management for the National Center.
- (ii) How the applicant will implement its management of the National Center, particularly with regard to the public or private nonprofit university with which it is associated;
- (iii) The applicant's plan for managing the National Center's activities and personnel, including quality control procedures for its activities and products and procedures for monitoring compliance with timeliness.

C.F.R. § 417.31(b).

Nearly, changes from a co-directorship to a single director and the governmental arrangements of a consortium versus that of a time contractor-subcontractor relationship would have great significance under the management criterion. Moreover, it was under the management criterion that the differences varied most dramatically between the fifteen applications and site reviews.

If the changes effected in Berkeley's amendment to its application during the negotiation process, did not change the substance of the application, then the statutory defects were never cured. If the changes are substantial enough to cure the defects, their effect on management and organization was so great as to require review by the panel.

#### CONCLUSION

The Court notes that "[t]he interpretation of a statute by an agency charged with enforcement is a substantial factor to be considered in construing the statute." *Youan v. Miller*, 425 U.S. 231 atk 235-236 (1976), citing *New York Department of Social Services v. Dublino*, 413 U.S. 405, 421 (1973). However, in this case it appears that the Secretary substantially ignored applicable statutory and regulatory requirements.

The Secretary's departure from the requirements is evident in relation to the negotiation process. The negotiation process permitted the Secretary to engage in result orientation, while paying lip service to statutory and regulatory guidelines. In light of the legislative history of the Act and the plain language of the statute, an "apply now-conform later" scheme is clearly not what Congress intended.

Such a scheme is not permitted under the applicable regulations. 34 C.F.R. § 75.109(b) allows an applicant to make changes to its application on or before the deadline date for submitting applications under the program. Under 34 C.F.R. § 75.216(a)(2)(3), the Secretary is supposed to return an application to an applicant if the applicant does not comply with all of the procedural rules that govern the submission of the application or if the application does not contain the information required under the program. The undisputed facts show that Berkeley did not amend its application on or before the deadline of August 14, 1987, in regard to the necessity for: (A) copies of sub-contracts; (B) a single Director; (C) a substantial financial contribution; and (D) a single National Center. The facts also show that the Secretary did not return Berkeley's non-conforming application. This defect was not cured by the negotiation process—applicants may not apply now and conform to statutory or regulatory requirements after the deadline date. The Secretary's failure to return Berkeley's application is contrary to the provisions of 35 C.F.R. 75.216.

The factors to be considered in determining whether a motion for preliminary injunction should be granted are well established. They are: (1) whether the plaintiff has shown a strong or substantial likelihood or probability of success on the merits; (2) whether the plaintiff has shown irreparable injury; (3) whether the issuance of a preliminary injunction would cause substantial harm to others; and, (4) whether the public interest would be served by issuing a preliminary injunction. *Mason County Medical Association v. Knebel*, 563 F.2d 256, 261 (CA6 1977).

After reviewing all of the relevant documents and listening to testimony, the Court is satisfied as indicated by the above discussion that the plaintiff's case is clearly meritorious. The plaintiff also showed that it would suffer irreparable harm if the Secretary is permitted to award the grant to Berkeley. The loss of a 30 million dollar grant is certainly substantial and irreparably harmful. The Court is satisfied that the potential harm caused to others by issuing an injunction is far outweighed by the public need for a National Vocational Education Center established and operated in accordance with the law as specifically intended by Congress. In light of the public interest in seeing government officials comply with the law and the intent of Congress in the establishment of the National Vocational Center, the Court finds that the public interest will be served if the Secretary is enjoined from awarding the grant to Berkeley.

Therefore, it is ordered, adjudged and decreed:

1. That the Secretary vacate the designation of the University of California at Berkeley as the National Center for Research in Vocational Education.
2. That the Secretary return the application submitted by the University of California at Berkeley as ineligible.
3. That the Secretary begin anew the award process in strict compliance with 20 U.S.C. § 2404 and applicable regulations.

4. That the new award process shall be consistent with this opinion.

GEORGE C. SMITH,  
United States District Judge.

UNIVERSITY OF CALIFORNIA,  
Berkeley, CA, March 18, 1988.

To: Charles Benson

From: Staff

Re: Arguments for reversal of the Court's decision

On March 15, 1988, the United States District Court in the Eastern Division of the Southern Ohio District ordered the Secretary of Education to vacate the designation of the University of California at Berkeley as the National Center for Research in Vocational Education. The Court did so because it judged that the application submitted by Berkeley was ineligible for consideration by the Department of Education.

With all due respect, the Court has grossly misread the proposal submitted by Berkeley, misinterpreted key sections of the law and regulations governing the award of grants and contracts, displayed little knowledge of standard negotiating practices in the award process, and ignored the findings of a review of this particular award process through an independent audit conducted by the General Accounting Office. If this decision is allowed to stand, it will establish an astonishing new precedent that will invite every loser in government competitions to seek judicial on the slightest technicality. It will seriously undermine the government's ability to make awards that best serve the national interest. It threatens the very heart of the competitive process that helps to ensure that the government supports activities of the highest quality for the best price.

#### LISTING OF ARGUMENTS

1. Three of Judge Smith's four reasons for ruling Berkeley's application was ineligible were based on provisions of the Perkins Act describing the National Center. However, the regulations governing the application procedure described who was eligible to apply to become the Center, and Berkeley's application did meet those requirements. The Judge's ruling on our compliance with the Perkins Act is therefore irrelevant (See Argument 1 below). The fourth reason was a conflict with EDGAR's requirement that copies of subcontracts be included with proposals; (see item 6 below).

2. Even if the Perkins Act itself were taken to determine who was eligible to apply, the substantive issues on which the Judge ruled Berkeley's application did not conform are all matters of interpretation. By substituting his own judgment for the Secretary's on these three matters, the Judge failed to honor the usual presumption that the executive is correct in discretionary matters within its authority. Judges should overrule the executive only if the executive is flagrantly wrong. If Judge Smith's decision were allowed to become precedent, all losing bidders in federal procurement competitions would be invited to file suit in hopes that judges would see some substantive reason to overturn the decision of the executive. (This has to be written by a lawyer.)

3. Even if the Judge had authority to substitute his judgment for the Secretary's, his interpretation of the facts was not correct. The first substantive issue is whether or not Berkeley proposed a single National Center. Even in our original proposal, submitted prior to August 14, we did propose a single Center with subcontractors, not regional centers as implied in Judge Smith's decision. (See Argument 3, below)

4. The second substantive conflict Judge Smith saw between the Berkeley proposal and the Perkins Act was whether we proposed a single director. We did. (See Argument 4, below.)

5. The third conflict Judge Smith saw between our proposal and the Perkins Act was whether the University of California was prepared to make a "substantial financial contribution" toward establishing the National Center. It was. (See Argument 5, below.)

6. The Court notes that Berkeley's proposal contained no subcontracts with each of the other five institutions with whom Berkeley intended to work. 34 C.F.R. 75.128 does not require submission of subcontracts, it does require the submission of a written agreement. Berkeley's application fully complies with 34 C.F.R. 75.128. (See Argument 6, below.)

7. This decision, which is wrong for the reasons stated above, should be overturned quickly, and Ohio State should be enjoined from any further legal action that will impede the operation of the National Center at Berkeley. Expedited procedures are warranted because the Perkins Act requires that there shall be a National Center and until this lawsuit is settled the operation of the Center is stalled. Neither the Center at Berkeley nor the former Center at Ohio State is able to function effectively, especially with regard to performing the service functions specified in the Perkins Act. Furthermore, the public interest demands that the National Center provide information to Congress and other interested parties as the Perkins Act enters its period of review for re-authorization Congressional hearings on re-authorization of the Perkins Act are expected to begin in early 1989—possibly sooner. As is usually the case in re-authorization of major Federal legislation, provider and client groups review the existing Act and establish their positions well in advance of hearings to be of use in the process of re-authorization, the National Center must proceed immediately to analyze existing large national data sets in an intensive fashion. Berkeley has already begun that analysis; it is also providing other kinds of information and leadership in the process of reviewing the Perkins Act. It should be allowed to continue to do so. (See Argument 7, below)

#### ARGUMENT 1 APPLICANT/GRANTEE

There is a clear distinction between applicants and grantees in the statutes and regulations governing the designation of the National Center for Research in Vocational Education by the Secretary of Education. It appears that the court at several points in its decision failed to recognize that distinction. On page 7, Paragraph A, the court cites 34 CFR 417.20: "an applicant is eligible to be designated the National Center if: (1) the application is from a nonprofit entity associated with a university and (2) is prepared to make a substantial financial contribution towards the establishment of the National Center." The operative word in this sentence is not "applicant" as the court presumes but "designated." The question then is not if the cited requirements of the statute are met by the applicant but if the requirements of the statute are met by the designee. Under this line of reasoning, therefore, the judge's finding in the last sentence of page 8, ("The Secretary's failure to make initial eligibility contingent upon statutory compliance is not in accordance with 20 U.S.C. 2404(a)") is incorrect.

The same argument holds with the judge's finding that Berkeley was a consortium and not a contractor-subcontractor relationship. The only statutes and regulations

on this issue do not in any part mention the word "applicant" only "Center" or "Grantee." Leaving the other issues related to this issue aside, the relevant question is whether Berkeley, when it was designated as the National Center complied with the statute. Again, the court erred in not distinguishing between an applicant and a grantee.

The same argument holds when the court finds that a director (and not co-directors) is required. (for further explanation see Argument 4)

The court goes even further afield on its treatment of the question of substantial contribution. The requirement there is not that "the university associated with the National Center is to provide a substantial financial contribution toward its establishment" (see page 15 of the court's decision, last paragraph) but that the University be prepared to make a substantial financial contribution. Clearly, the facts indisputably show that Berkeley was quite prepared and did make the necessary commitment of a substantial annual contribution, exceeding \$600,000. Again, the court confuses requirements applicable to applicants and those applied to grantees.

Finally, it is important to note that none of the pertinent regulations which govern applicants and/or applications would disqualify Berkeley's application (see Federal Register, Vol. 50 No. 159, Friday, August 16, 1985, Rules and Regulations: Sections 417.2, 417.20, 417.30, 417.31). The distinction is quite clear in the regulations, some are for applicants (see above) and some are for the National Center (see Sections 417.40 et. seq.).

In sum, the court has badly confused the issue eligibility of the application with compliance of the Center. To be eligible for consideration, the application had to meet a few simple criteria. It had to come from a non-profit entity associated with a university prepared to make a substantial financial contribution. It had to address the major topics outlined by the Secretary in the regulations governing the competition. It had to be submitted on time. Berkeley satisfied all of these criteria. Before a grant is awarded, it is the responsibility of the government to ensure that the final award is in compliance with all relevant laws and regulations. The government not only has the right, it has the obligation to request changes that will ensure that the final award is in compliance. This precisely what the government has done in this instance. It insisted on one director rather than a co-director. It insisted that there be no ambiguity that the center would operate as a single center. It insisted that Berkeley assume sole responsibility for making a substantial financial contribution rather than count the combined contributions of Berkeley and its subcontractors. It insisted on reviewing the language that would be used in the subcontractual agreements. Surely these are all proper, appropriate actions for the government to take.

The court, however, seems to think that 34 C.F.R. 75.109(b) prevents such changes from occurring once the deadline for submission of the application deadline for proposal submission has passed. 34 C.F.R. 75.109(b) reads:

An applicant may make changes to its application on or before the deadline date for submitting applications under the program.

Anyone familiar with the government procurement process knows that this section refers to changes initiated by the applicant. Prior to the deadline, an applicant may make any changes it wishes; after the deadline it may not initiate any changes on its own. It may, however, accede to requests by the government for changes. To rule that 75.109(b) prohibits any changes requested

by the government completely destroys the power of the government to negotiate and ensure that the government obtains the best product for the best price in strict compliance with the law. To so rule effectively declares invalid every government contract and grant in place!

#### ARGUMENT 2 PRESUMPTION OF AGENCY REGULATORY (TO BE ADDRESSED BY AN ATTORNEY)

#### ARGUMENT 3 THE ISSUE OF A SINGLE CENTER

The Court accepts the plaintiff's contention that Berkeley proposed "to fund six regional centers" and that the proposal failed to comply with Congressional intent to establish a single national center with a critical mass of resources. This conclusion is a complete misreading of Berkeley's proposal. Berkeley proposed to marshal the resources of six of the country's leading research institutions into a single national center with a unified vision of the future of vocational education and a carefully crafted and well integrated agenda for research and service. What Congress has sought to avoid is the proliferation of independent centers that might duplicate efforts or work at cross purposes. The law is quite clear that it intended that the Center enter into subcontracts to accomplish the aims of the Center, and nowhere in law or regulation is there even the slightest suggestion that subcontractors must all be located in one single location. Rather it is the singleness of purpose, unity with respect to planning and coordination, and the avoidance of duplication that Congress has sought.

Berkeley's proposal unquestionably achieves these Congressional aims. The fact the review panel and the Department of Education judged Berkeley's proposal superior to that of Ohio State, despite Ohio State's years of experience in operating a center, is testimony to the power of Berkeley's proposal. Berkeley has not proposed, as the Court maintains, "to fund six regional centers." Nowhere has Berkeley proposed to mindlessly decentralize and replicate all the functions of the Center at branches throughout the country. On the contrary, Berkeley has proposed a unified national agenda for research and service and seeks to carry out that agenda by strategically locating special functions at those places that are among the best qualified in the nation to perform these tasks. Thus, primary responsibility for in-service training belongs to Virginia Polytechnic Institute, with one of the largest and most respected vocational education facilities in the country. Leadership development is housed at the University of Minnesota, which has a long history of experience with distinguished leadership institutes. Technical assistance for special populations is the primary responsibility of the University of Illinois, which leads the country in research on students with special needs. The research efforts take advantage of the unparalleled expertise of the Rand Corporation with survey research and quantitative methods, the pioneering work of Teachers College in the relationships between education and work, and the landmark efforts of the University of California in economic development, writing, and mathematics.

In short, Berkeley proposed a national center in the truest meaning of the word. It proposed a center that sought out the finest minds in the country and set them to work in a well coordinated, unified way on the major problems confronting vocational education. This is precisely what Congress sought; it wanted these resources amassed in a single center but not necessarily in a single location. Indeed to insist on a single location is to ensure that Congress must

settle for second best. It is simply not possible in a project of this scope and magnitude to assemble all the best talent in one geographic place. Surely Berkeley's strategy achieves the aims of Congress. The panel of experts reviewing the applications thought so, as did the Office of Vocational and Adult Education, the Secretary of Education, and the General Accounting Office. On what basis can the court reasonably rule otherwise?

#### ARGUMENT 4 THE ISSUE OF THE SINGLE DIRECTOR

Berkeley's proposal named Professors Charles Benson and Gordon Swanson as "Co-Principal Investigators". However, the proposal explicitly stated that "Professor Charles Benson is fiscally accountable to the U.S. Department of Education, the provider of funds and client, and this responsibility cannot be delegated or abridged." (Volume I, p. 178; emphasis supplied) It is plain that ultimate responsibility and authority were intended to rest with Professor Benson alone, and therefore all other employees of the National Center would be accountable to Professor Benson. The designation of others as co-principal investigators is traditional in universities, as a way to share credit for ideas which emerge from the interaction of many kinds. Designating Professor Swanson as co-principal investigator acknowledged his importance in the intellectual leadership of the National Center, but Professor Benson was clearly designated as the sole person at the top.

This was all in Berkeley's original proposal, submitted before the August 14 deadline. Subsequently, in the negotiation process, the Department asked Berkeley to change the titles given to Professors Benson and Swanson in order to make Professor Benson's sole leadership explicit in his title. Judge Smith cited testimony that this change of titles "did not change the substance at all". That is correct because Berkeley's original proposal had clearly named Professor Benson as the sole person responsible to the funding agency, with all other employees of the National Center, including Professor Swanson, to be accountable to him.

#### ARGUMENT 5 THE ISSUE OF A SUBSTANTIAL FINANCIAL CONTRIBUTION

The Perkins Act states that the National Center shall be "a nonprofit entity associated with a public or private nonprofit university which is prepared to make a substantial financial contribution towards its establishment." This language is repeated in the language of the regulations describing who was eligible to apply. Judge Smith noted that neither the statute nor the regulations defined "substantial". However, he concluded that Berkeley's application was ineligible because, in negotiations after the August 14 deadline, the Secretary asked for a restructuring of Berkeley's contribution. In the restructuring, certain direct costs which were to have been paid by the subcontracting institutions would now be paid by Berkeley, so that the foregone overhead on these costs would be contributed by Berkeley instead of its subcontractors. The amount of contribution was not an issue, only the manner of accounting for it. This kind of technical adjustment happens routinely in negotiations over grants and contracts. It is erroneous to conclude that Berkeley's initial proposal was not eligible, since Berkeley clearly was prepared to make a substantial financial contribution one way or the other.

#### ARGUMENT 6 THE ISSUE OF THE FAILURE TO INCLUDE SUBCONTRACTS

The Court notes that Berkeley's proposal contained no subcontracts with each of the

other five institutions with whom Berkeley intended to work. The Court maintains that the failure to include subcontracts violates 34 C.F.R. 75.128 (c). However, 34 C.F.R. 75.128 does not require submission of *Subcontracts*. 34 C.F.R. 75.128 reads as follows:

(a) If a group of eligible parties applies for a grant, the members of the group shall either—

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity to apply for the grant.

(b) The members of the group shall enter into an agreement that—

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance made by the applicant in the application.

(c) The applicant shall submit the agreement with its application.

Berkeley complied fully with 34 C.F.R. 75.128. Berkeley was clearly identified as the prime contractor applying for the grant. The proposal clearly defined the activities to be performed by Berkeley and each of its subcontractors. It described the governance structure by which Berkeley and its subcontractors had agreed to work. It included letters from each of its subcontractors committing them to perform the work as outlined in the proposal for the amounts indicated in the budget. It also, in response to the Government's request for additional information provided a model subcontract pursuant to 34 C.F.R. 75.231. This is standard operating procedure for the government's procurement process. The applicant and its potential subcontractors commit themselves to perform the work as proposed. All parties are free to reconsider if during the process of negotiations the government requests changes. Formal subcontracts are then drawn up when the negotiation process has concluded. It is impossible, therefore, to include subcontracts with the initial application. The application must simply contain commitments to conduct the work as proposed. Berkeley's application contained commitment letters from all of its subcontractors. It, therefore, was in full compliance with 34 C.F.R. 75.128.

#### ARGUMENT 7 THE ISSUE OF THE IMPORTANCE OF SPEEDY RESOLUTION

Any delay in the decision to award the grant for the National Center for Research in Vocational Education to the University of California at Berkeley will have serious and long-lasting consequences for the field of vocational education, for several reasons:

1. The Carl Perkins Act, which authorizes federal spending for vocational education and which has embodied federal policy on vocational education, expires in 1989. The reauthorization of the Perkins Act is a lengthy process involving serious discussions about the direction of federal policy. This process had already begun, and will continue into 1989. As part of its legislative mandate to "develop and provide information to facilitate national planning and policy development in vocational education", the National Center should participate in the discussions around reauthorization by providing its expertise and research capabilities to Congress and the Department of Education. In particular, the Center at this very moment should be responding to requests for data analysis from Congressional staff, the American Vocational Association, the Council of Chief State School Officers, and many other related organizations. However, if the award of the Center grant to Berkeley is delayed, these kinds of participation cannot take place—by either a National Center at Berkeley or a National Center at

any other location—and policymakers will be denied access to important information that the Perkins Act specifically requires of the National Center. Furthermore, this activity cannot be carried out later, after a delayed start for the National Center, because the process of reauthorizing the Perkins Act has already begun and will not wait for a lengthy process of starting and completing a new competition of the National Center.

2. The elections of 1988 will bring substantial changes in political leadership, both in the executive branch as a new president takes office and in Congress. During 1988 and 1989, candidates and newly-elected politicians will be formulating positions on educational issues, since education has emerged as among the most important challenges facing our nation. As part of its general charge to provide research and information, as well as "information to facilitate national planning and policy development in vocational education", the National Center should legitimately provide information and research to newly-elected policy-makers as they begin to define their positions on educational matters. This process cannot take place if the start of the National Center is delayed. Like the participation of the National Center in the reauthorization of the Perkins Act, this kind of activity cannot readily be performed later, since the process of defining issues and positions is now actively underway.

3. The field of vocational education is ripe for change. The "excellence" movement of the past several years has thrown vocational education into disarray; but on the other hand the recognition has grown recently of how high dropout rates are and how inappropriate for many students the conventional academic curriculum is. The field of education is ready for new approaches to both academic and vocational education, and is now looking for leadership in this area. Any delay in beginning the National Center will interrupt the momentum that has been building for serious reform in the nation's system of vocational and academic education.

4. Any large and complex organization is subject to deterioration if it is not maintained. The University of California at Berkeley has assembled a team of nationally-prominent researchers and analysts to carry out the various missions of the National Center. If there is significant delay, the members of this team will drift off to other research, teaching, administrative, and policy positions, and the laborious process of assembling a Center will have to start again. This will further delay the ability of the National Center to engage in the research and dissemination activities which Congress has required under the Perkins Act.

5. If the grant to Berkeley for the National Center is vacated, the delay in beginning a National Center will be enormous. The Judge's order to "begin anew the award process in strict compliance with 20 U.S.C. § 2404 and applicable regulations" refers to the Perkins Act, which requires the Department of Education to select a Center from "solicited applications". While this might mean that the Department should choose from applications already solicited, it certainly allows the Department to choose from among applications solicited anew. Beginning the process of awarding a grant from the beginning would require publishing notice in the Federal Register of the intended process; allowing a period for public comment; announcing planning grants; receiving applications for planning grants; awarding planning grants; allowing a period of time for planning grants; accepting final

grants; going through a review procedure to choose among final applicants; and finally awarding a grant. The process of reviewing final applications could be expected to be much more thorough and therefore time-consuming this time around than the process just completed has been, as a way of avoiding still another lawsuit. This entire process consumed 18 months in the existing round of applications for a National Center; it could easily take this long or even longer if the Department of Education must "begin anew the award process". Thus the decision to vacate the designation of Berkeley as the National Center generates the prospect that there will not be a National Center until sometime in 1990.

It is important to note that such a delay will not only damage the institution that Berkeley has created to carry out the work of the National Center; it will also destroy the organization assembled at Ohio State University, where many people have already left and more will continue to do so. Thus delay demolishes any chance that an existing institution can speedily start the work of the National Center.

Mr. WILSON. The department is in the process of appealing this decision and oral arguments will be made in early June. I am confident that the court of appeals will overturn the Ohio District Court decision.

Mr. President, language has been included within H.R. 5, which although I believe sets a dangerous precedent, has become necessary in the face of a lengthy judicial proceeding. Until a final court decision is reached, Berkeley will be unable to negotiate contracts essential to the successful operation of the national center without taking a substantial financial risk.

Specifically, H.R. 5 includes provisions to allocate \$2 million to Ohio State University and \$2 million to Berkeley to operate separate vocational education research centers. This funding will relieve Berkeley of any financial liability incurred, and more importantly, much-needed vocational education research can continue.

I thank the Chair and the distinguished floor managers for allowing me the opportunity to address my colleagues on this matter and yield the floor.

Mr. HATCH. Mr. President, today is an important day for our country. We shall take final action on an omnibus bill, H.R. 5, the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988. This bill, for 5 years reauthorizes many established Federal education programs and authorizes, for the first time, several new initiatives to meet current national education problems.

Education is not only the key to the future of our Nation's young people. Increasingly, it is also the key, in a technologically more complex and changing economy, to retaining opportunity for full participation in our society by older citizens as well.

I am most pleased that such an important bill as the School Improvement Amendments of 1988 is named for my good friend, ROBERT T. STAFFORD, the distinguished Senator from Vermont, who is retiring at the end of

this session. His commitment to finding solutions for a broad range of national education needs over his many years of service in the Congress is properly recognized by the fact that we have named this bill after him. All of us who believe that a quality education is a fundamental component of our national well-being and security will miss him.

The children of our country should have a brighter tomorrow, a better future, as a result of many of the programs in this bill. Although the Federal taxpayer's dollar contributes only about six cents of every education dollar spent in this country, those six pennies are very important for serving groups or meeting national problems which, otherwise, would remain unserved or unaddressed. A good share of those six pennies will go to fund the programs authorized by this legislation.

Such programs, together with the care and dedication of parents and educators in implementing them, are very important for my own State of Utah. We are a small State, with a long tradition of a significant self-taxing effort to fund good educational programs. But we are hampered by the fact that the Federal Government owns nearly 70 percent of the land in our State. This drastically reduces our tax base. With one of the highest birthrates in the country, and many federally-connected children residing within our borders, Utah has so many children in its schools that, despite our higher-than-average tax effort, Utah has the second lowest average per pupil expenditure in the United States. Federal programs—many old, some new—authorized by H.R. 5, the school improvement amendments, are an important supplement to Utah's own efforts. I wish to thank the many parents and educators and others in Utah who have taken the time to give me their advice on how to make these programs better serve the needs of Utah children and of children across this country.

Let me highlight for a few moments some of the important provisions of this omnibus bill. The chapter 1 program of remedial education for educationally and economically disadvantaged children must succeed. It served over 23,000 children in Utah last year. In today's world, it is critically important that our children develop the elementary skills of reading and writing if they are to have available to them the full range of opportunities which our Nation has to offer. Thus, I am pleased that this bill also contains a new basic skills remedial program targeted on secondary schools as well as some additional programs to help ensure that our students will stay in school and make the most of their education.

Another excellent education program which fosters high quality academic instruction has been expanded in these school improvement amend-

ments. We have significantly increased the authorization of the magnet schools program to promote desegregation. We have also authorized a new alternative curriculum schools program to encourage integration and improve quality education throughout districts which have high concentrations of minority children. I hope that the original magnet schools program is sufficiently funded so that its worthy purposes may be more fully implemented. Also, if magnet schools are fully funded, we can begin funding the new alternative curriculum schools program. I believe this, too, is important. For, if we increase the quality of education offered throughout districts with high minority populations, we will not only be serving better those deserving children. We then may also be able to bring back into the public school system nonminority children currently attending private schools. This could be the key to across-the-board improvement in such localities. Thus, we must continue the old desegregation efforts under the original magnet schools program. But we should also recognize that there are further problems, to be solved in the years ahead, to make integration a reality throughout this country. Our new alternative curriculum schools program can play an important part in that effort.

H.R. 5 also wisely increases the range of bilingual education programs which can receive Federal funding. The greater flexibility for parents and educators to select instructional methods suited to local needs and circumstances can improve the education for one group which deserves special attention from the Federal Government, our limited-English-proficient children. I think it is most important to allow these children a greater chance to learn our common language. To be able to utilize the full range of opportunities of our common national life, these children need to learn English even while maintaining their own native language and culture. We have learned in the last few years that school districts are eager to have this increased instructional flexibility. There have been far more applications than available Federal funds for alternative bilingual instruction programs—for special alternative programs—under the current law. For example, in 1985-86, there were three applications from Utah for funding a "special alternative language instruction program" under the Federal Bilingual Education Act. However, due, I believe, to the shortage of available funds under the existing 4-percent cap, not one of those proposals received Federal funding. This is regrettable. The change contained in these school improvement amendments will help remedy this inflexibility—an inflexibility, I might add, which only hurts these children who truly need

this special assistance from the Federal Government.

Also reauthorized in these school improvement amendments is the Federal impact aid program, a program critically important to Utah because of the large numbers of federally connected children residing in our State. This bill reauthorizes both programs, for payments in lieu of taxes and for construction assistance. The testimony offered at the Education Subcommittee's field hearing in Farmington, UT, last August was most helpful in their reauthorization. Funding for "B" category students has been reaffirmed. And we have included another important new provision—up-front payment of the full handicapped portion of the entitlement for handicapped students. It is only fair that the Federal Government should bear a reasonable cost of educating federally connected children residing in our States, and that, with limited funds available, more assistance be provided to help defray the costs of the most expensive education.

I also believe that the prohibition on dial-a-porn now contained in this bill is critically important to the welfare of the children of this Nation. It seems only right and proper to me that at the same time we approve a range of positive programs to assist the children of this Nation we also face up to a problem which considerable evidence has shown is detrimental to their physical, intellectual, and moral well-being. If a so-called technological solution to the access of our children to dial-a-porn had been available, I, of course, would have supported it. However, I feared that the technological solution proposed after much long and careful work by many in both the House and the Senate had too many loopholes to make much of a dent in this problem. There are those who believe that the particular prohibition of telephone dial-a-porn, originally in the Senate bill and reinserted yesterday by the House of Representatives, is unconstitutional. If it is so held by the courts of this land, I shall work to enact one which meets constitutional muster. I bow to no one in my respect for the rights guaranteed by the first amendment. I also believe, however, that dial-a-porn has not been an exercise of rights in fact granted by that constitutional provision as well as being a force detrimental to the well-being of this Nation's young people.

To repeat, Mr. President, I believe there is much for us all to be proud of in these School Improvement Amendments of 1988. I would also like to thank my colleagues Senators PELL and STAFFORD, who have so ably guided this omnibus bill to its completion, and all my other colleagues on the Education Subcommittee and the Labor and Human Resources Committee who have worked so diligently on this bill. I look forward to continuing efforts with them, and with my other colleagues in the Senate and the House of Representatives, to serve the

deserving children of our country with efficient and productive Federal education programs.

Mr. COCHRAN. Mr. President, I join my colleagues today in expressing my support for H.R. 5, the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

This bill not only renews the Federal commitment to elementary and secondary education, but it also strengthens that role. New programs such as star schools, even start, and teacher training initiatives will provide students with opportunities never presented to them before.

The chapter 1 program is of vital importance to students in Mississippi. The renewal of this program will continue to benefit thousands who deserve a quality education. I have seen the work and the success of many chapter 1 programs in my State. Recently, Secretary Bennett recognized 123 school districts across the country which have been exemplary in the chapter 1 field. Two of my constituents, Bertrand Antoine of the Greenwood, MS, public schools and Robert McDaniel, of the Hazlehurst, MS public schools were both selected to receive this honor. They are examples of those coordinators who do make chapter 1 a successful program. I congratulate them and the many other coordinators across my State.

I congratulate my colleagues in both bodies who have so diligently worked on this bill, and I thank those members of the Senate Labor and Human Resources Committee, with whom I had the pleasure of working on this effort.

Mr. HELMS. Mr. President, I am pleased that the House of Representatives has included language in this bill to ban interstate dial-a-porn. It has been a long- and hard-fought battle, but the American people have been heard: We, as a society, cannot and will not tolerate this smut on our telephone lines.

Mr. President, this result would never had occurred had it not been for the hard work of a number of people in the House of Representatives. Congressmen BILL DANNEMEYER and THOMAS BLILEY, in particular, have done yeomen's work on this issue and they deserve a lot of credit. Without their efforts, the ban on a dial-a-porn would never had come to fruition.

Mr. President, just as I suspected, some House Members tried to duck the real issue of dial-a-porn by claiming that banning dial-a-porn is unconstitutional. With all due respect to these gentlemen, I believe they are wrong.

I am not a lawyer, Mr. President, but it does not take a great deal of wisdom to see that lawyers and Federal judges have made a shambles of the traditional laws in our country banning obscene and indecent material. These laws were reasonable and had a long and honorable history. They kept at

bay certain vile and base instincts of our fallen human nature for the good of individuals and society alike. Through these laws, decency and modesty and sound family life were promoted.

These laws, however, have been undercut by a patchwork quilt of confused and confusing Federal court rulings. It is an understatement to say that the precedents of the Supreme Court and other Federal courts on the subject of obscenity are more properly labeled constitutional chaos than constitutional law. The fact is that the first amendment and antiobscenity laws existed side by side, without serious conflict, for all of American history until the second half of this century.

Then, still having the same old Constitution but imbued with a new liberal ideology, the Supreme Court started hacking away at traditional laws against smut. In short, the libertines of the ACLU combined with usurpers on the Federal bench set out to repeal decency in this country—all under the guise of constitutional law.

For the first time in the history of the Constitution anti-porn laws had to pass elaborate and technical constitutional tests before they could be enforced. Not surprisingly, few laws could pass this new extra-constitutional muster. The philosopher/kings had finally arrived in America, and they sat in black robes on Federal court benches armed with new, radical ideas about the Constitution.

The results in 1988, Mr. President, are plain to see. The United States of America is now a society satiated with obscene, indecent, and pornographic materials. Not only are they available everywhere in the public domain, but thanks to the dial-a-porn industry, they are even available over the telephone of every home in America.

Mr. President, the patriots of the American Revolution and the framers of the Constitution did not sacrifice their lives, their fortunes, and their sacred honor so that a coterie of dial-a-porn operators and the phone companies could become millionaires in the 20th century. Our forefathers had higher ideals in mind. The great principles of freedom they put in the Constitution were meant to serve the common good, not the prurient interest.

Mr. President, I wish each and every Senator could have been with me the other day and could have seen what I saw. I attended a press conference with two parents whose families had been destroyed by dial-a-porn. One father, holding a picture of his precious 4-year-old daughter, told the story of how his daughter was coerced into engaging in sexual acts by a day-care provider's son after the son had listened to some '75 dial-a-porn messages. A mother told a similar story about how friends of her son raped

her 10-year-old daughter after listening to 2½ hours of dial-a-porn.

Their pain is real, Mr. President. I am told that hundreds, if not thousands, of parents have experienced the same pain. Their children's innocence has been stolen by the porn kings and some phone companies for the sake of a buck.

In this Senator's opinion, the Constitution does not force Congress to sanction a dial-a-porn industry which corrupts the morals of children and pollutes the minds of adults. The Constitution is not a death wish reduced to writing. It does not require us to commit cultural suicide by tolerating vice and the cultivation of vice for profit.

Some Senators may state that protection for the porn kings may not be what our Founding Fathers wanted but the courts have tied their hands.

Nonsense, Mr. President. Citizens for Decency Through Law, Inc., has prepared a legal memorandum supporting the constitutionality of S. 212 which is identical to the dial-a-porn language currently contained in H.R. 5. I placed this memorandum in the RECORD on December 1 of last year and I am placing it in the RECORD again.

I will not take the Senate's time to read this lengthy brief. I emphasize, however, that the Supreme Court has never, I repeat, never said that it is unconstitutional to ban obscene and indecent dial-a-porn and I don't believe they will in the future.

The question here today, Mr. President, is not whether my amendment is unconstitutional—it clearly violates no provision of the Constitution—but whether we in Congress have the courage to stand up against the porn kings and smut peddlers and stand up for the American people and public morality.

I am happy to see that the House agrees with the Senate that interstate dial-a-porn should be banned. I urge swift adoption of H.R. 5.

I ask unanimous consent that the memorandum I mentioned earlier which was prepared by the legal staff of Citizens for Decency Through Law, Inc., appear in the RECORD.

I also ask unanimous consent that a letter from the Knights of Columbus supporting swift approval of H.R. 5, also be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

**CITIZENS FOR DECENCY THROUGH LAW—  
MEMORANDUM OF LAW IN SUPPORT OF S. 212**

This legislation proposes to amend Section 223 of the Communications Act of 1934 (47 U.S.C. § 223), and as amended will prohibit obscene and indecent communications by means of telephone to any person, regardless of age. It is the purpose of this memorandum of law to demonstrate the need for this legislation, and to provide supporting legal authority for its enactment.

**I. THIS HISTORY OF DIAL-A-PORN AND THE  
FAILURE OF PREVIOUS LEGISLATIVE EFFORTS**

Today, any child in America can hear hardcore sexually explicit messages on the

country's telephone system. These recorded and live so-called "dial-a-porn" messages contain graphic descriptions of ultimate sex acts, both heterosexual and homosexual, sado-masochism, of incest, bondage, and sex with animals. Attorneys representing this industry are admitting that dial-a-porn is openly available to children, but according to them: The exposure of this material to children is the price we must pay for a free society. *Carlin Communications, Inc. et al., v. The Mountain States Telephone & Telegraph Company, et al.*, CIV. 85-1420 (D. Ariz. 1985) (transcript of proceedings). In every major city across this country, dial-a-porn telephone services became readily accessible to children by mid-1985, with federal and state law enforcement agencies apparently unable or unwilling to stop it.

This dial-a-porn "industry" is still in its infancy, dating back to March of 1983. Yet, in less than four years, it has grown from only one service operating nationally from its New York headquarters, to many services operating in every major city. The messages continue to become more sexually explicit and deviant in their content.

When dial-a-porn first became available in March 1983, it should have been prosecuted under already existing federal law. 47 U.S.C. Section 223 of the Federal Code then provided: "(a) Whoever—(1) in the District of Columbia or in interstate or foreign communication by means of telephone—(A) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent . . . shall be fined not more than \$500 or imprisoned not more than six months or both." Section 223, by its plain meaning, should have been used by the FCC and the Department of Justice (DOJ) to control dial-a-porn services. However, throughout 1983, the FCC and DOJ issued letters to one another and to the general public creating every possible excuse as to why Section 223 could not be enforced.

The FCC went on record as ruling: "Section 223(1)(A) applies only to persons who utter obscene or indecent words during calls they place." "Second Report and Order," Gen. Docket No. 83-989 (Oct. 16, 1985) (emphasis added). According to the FCC, since dial-a-porn dealers did not "place" the calls, Section 223 did not apply to them. This restrictive and erroneous interpretation given Section 223 by the FCC resulted in a lack of legal action taken against dial-a-porn during its first year of operation. The FCC refused to take administrative action, and the DOJ refused to take criminal or civil court action. Such lack of prosecution allowed the services to flourish. Meanwhile, the content of the messages became far more sexually explicit, moving from merely "indecent" suggestive language, to language which clearly fell within the restrictions of both state and federal obscenity legislation.

Congress became frustrated at the lack of legal action taken against dial-a-porn and, in late 1983, amended Section 223, making it a crime to make "any obscene or indecent communication for commercial purposes to any person under 18 years of age or to any other person without that person's consent." 47 U.S.C. Section 223(b)(1)(A) (emphasis added). In so amending Section 223, Congress "legalized" dial-a-porn. For the first time in the history of this country, obscene material was de-criminalized for "consenting adults." This legalization of obscene dial-a-porn messages for consenting adults directly violated legal precedent as established by the Supreme Court in cases such as *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973), which rejected the "consenting adults" defense.

In amending 223, Congress further provided that the FCC was to issue regulations

which would deny access to dial-a-porn services to persons under 18 years of age. Compliance with these regulations would be a complete defense to liability under Section 223. In other words, even if a minor breaks through the restrictions and calls dial-a-porn, the dealer, having complied with FCC regulations, cannot be prosecuted.

Attempts by the FCC to issue regulations pursuant to § 223(b)(2) have been totally unsuccessful, and it is now clear that no regulations from the FCC will adequately protect children from these dial-a-porn services. The first set of FCC regulations, issued in 1984, was struck down as unconstitutional by the Second Circuit Court of Appeals. *Carlin Communications, Inc. v. FCC*, 749 F.2d 113 (2nd Cir. 1984). A second set of FCC regulations, issued on October 16, 1985, was also set aside by the Second Circuit Court. *Carlin Communications, Inc. v. FCC*, 787 F.2d 846 (2nd Cir. 1986).

The above described history reveals two major flaws in the 1983 amendments to Section 223 which have resulted in the failure to control dial-a-porn. First, legalizing dial-a-porn for "consenting adults" was contrary to the decisions of the U.S. Supreme Court and placed Section 223 in conflict with all other federal obscenity statutes. Consequently, the legalization of dial-a-porn assured that it would always be accessible to children. The second major flaw in the 1983 legislation was to give the FCC the power to issue defenses to liability under § 223(b)(2)—the FCC has demonstrated its inability to issue workable regulations that will protect children.

Finally, as a result of the 1983 legislation and of the indecision by the FCC on this matter, the courts and the law enforcement community are in a state of confusion concerning the control and/or prosecution of dial-a-porn distributors. At the present time, federal prosecutors will not prosecute the distributors of obscene dial-a-porn messages, even where they have been made blatantly available to children. The reason for this lack of federal enforcement is the belief that dial-a-porn distributors can only be prosecuted under § 223(b) and under none of the other federal obscenity laws. State law enforcement authorities will not prosecute because of the confusion in the federal arena, fear of legal action by the dial-a-porn industry against state officials, and a mistaken belief that the FCC has preempted this field of law. At the writing of this memorandum, there are no federal or state criminal cases pending against dial-a-porn distributors—they are operating freely, sensing a complete immunity from prosecution.

**II. THE PROPOSED AMENDMENT TO 47 U.S.C. § 223 DOES NOT VIOLATE A DIAL-A-PORN RECIPIENT'S RIGHT TO PRIVACY OR RIGHT TO ACCESS**

The first objection that may be leveled at this legislation is that it violates a customer's right to receive dial-a-porn messages. As will be shown, this criticism is without merit. It is well settled that obscenity, in whatever form, is not protected by the First Amendment. *Miller v. California*, 413 U.S. 15 (1973); *Kaplan v. California*, 413 U.S. 115 (1973). Hence, the states and federal govern-

\* Federal criminal charges were dismissed in 1985 in Utah, where numerous children had been exposed to the dial-a-porn services. Because § 223(b) is in a state of confusion, the U.S. Attorney attempted to prosecute Carlin Communications and others for violations of other federal obscenity laws. However, the Judge dismissed the indictments, ruling that violations could only be prosecuted under § 223(b). *U.S. v. Carlin Communications, Inc., et al.* No. CR-85-00086G (D. Utah 1985).

ment may lawfully prohibit its commercial distribution, whether telephonically or through other media. *Id.* The Supreme Court has made clear that the "mere private possession of obscene material" in the home cannot be made a crime. *Stanley v. Georgia*, 394 U.S. 557 (1967). However, there is no correlative right to purchase obscenity in the public marketplace or to have it distributed to your house through channels of public commerce. In *United States v. 12 200-ft Reels*, 413 U.S. 123 (1973), the Court held that the "right to possess obscene material in the privacy of one's home does not give rise to a correlative right to have someone sell or give it to others." 413 U.S. at 128. In so holding, the Court ruled that *Stanley* is to be viewed as "explicitly narrow and precisely delineated." 413 U.S. at 127. "We are not disposed to extend the precise, carefully limited holding of *Stanley* . . ." 413 U.S. at 128. Indeed, the Court has squarely held that there is no right to "receive it" in "the privacy of the home." *United States v. Orto*, 413 U.S. 139, 141 (1973) (emphasis added). In *Orto*, the Court further held that there is no right to use "common carriers in interstate commerce" (such as the telephone company) for delivery of obscene material to the home. 413 U.S. at 142. See also, *United States v. Reidel*, 402 U.S. 351, 353-54 (1971) (there is no right to deliver obscene material for use in the home.)

Furthermore, the Supreme Court in *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), held, *inter alia*, that radio and television do not have the right to "broadcast" "indecent" material into the home. The Court rejected the contention that an individual has a right of access in the privacy of his home to "indecent" radio or television broadcasts. The Court reasoned that such broadcasts are "uniquely accessible to children" and "that the government's interest in the 'well-being of its youth' justified the regulation of otherwise protected speech." 438 U.S. at 149. This government interest in the "well-being of its youth" and the "accessibility" of children are similarly present, and are triggered, upon the transmission of "indecent" or "obscene" dial-a-porn into the home. As the Court stated: "[T]he ease with which children may obtain access . . . coupled with the concerns [for children] recognized in *Ginsberg*, amply justify special treatment of indecent" material. 438 U.S. at 150.

Assuming *arguendo* that exposure of dial-a-porn to children can be prevented, the Supreme Court has rejected the contention that the distribution or transmission of obscene materials between consenting adults is constitutionally sanctioned. In *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973), the Court held that notwithstanding lack of exposure to children, the distribution of obscene material between consenting adults could be regulated: We categorically disapprove the theory . . . that obscene, pornographic films acquire constitutional immunity from state regulation simply because they are exhibited for consenting adults only. . . . [W]e hold that there are legitimate state interests at stake in stemming the tide of commercialized obscenity, even assuming it is feasible to enforce effective safeguards against exposure to juveniles and to passerby. Rights and interests other than those of the advocates are involved. 413 U.S. at 57. This holding squarely does away with any contention that "consenting adults" have a right to transmit or receive obscene dial-a-porn. It should again be stressed, however, that many dial-a-porn distributors have openly made their "product" available to children and have refused to acknowledge any responsibility for excluding children's access.

The products of the dial-a-porn industry are clearly not protected by a constitutional right of privacy. These messages are being publicly distributed and have become openly available to children through channels of public commerce. Because of the complete public and commercial nature of this dial-a-porn industry, regulation under Section 223 is clearly permissible.

### III. THE FEDERAL GOVERNMENT MAY LAWFULLY PROHIBIT THE TRANSMISSION OF OBSCENE AND INDECENT DIAL-A-PORN.

#### A. Obscene Dial-A-Porn

Without question, obscene speech is not protected by the First Amendment. *Brockell v. Spokane Arcades, Inc.*, 472 U.S. , 86 L.Ed.2d 394, 105 S.Ct. (1985); *Miller v. California*, 413 U.S. 15 (1973). Hence, the government may lawfully prohibit its distribution, whether telephonically or through other media. *Kaplan v. California*, 413 U.S. 115 (1973). See also, *United States v. Lamplsey*, 573 F.2d 783, 50 A.L.R. Fed. 525 (3rd Cir. 1978) (upholding constitutionality of 47 U.S.C. § 223). This issue is so well settled that there has been no serious claim to date that the Congress may not constitutionally prohibit "obscene" dial-a-porn.

#### B. Indecent Dial-A-Porn

The more frequently repeated assertion is that Congress may not legislate against "indecent" dial-a-porn. This assertion is erroneous and ignores sound legal precedents permitting the use of the "indecent" standard for the telephone medium. These precedents and authority are set forth herein.

In its landmark case of *F.C.C. v. Pacifica Foundation*, 438 U.S. 726 (1978), the Supreme Court defined the word "indecent" as "nonconformance with accepted standards of morality." It is a "shorthand term for patent offensiveness." *Id.*, at 470 n. 15. This definition obviously does not coincide with the three-part definition of "obscenity" found in *Miller v. California*. Yet, the Supreme Court has never limited government restrictions on speech to the obscenity standard.<sup>2</sup> For example, the Court has upheld restrictions on all of the following types of speech: false advertising, speaking a prayer in a public school, libel, slander, speaking words which amount to a conspiracy or an obstruction of justice, sedition, yelling fire in a crowded theatre, using words which constitute offering a bribe, words that threaten social harm because they advocate illegal acts, words (from a loudspeaker) at 3:00 a.m. in a residential neighborhood, speaking in contempt of court, committing perjury under oath, television cigarette advertisements, saying words which have been classified (e.g., secret) by the government, copyright violations, pretrial publicity which might interfere with a defendant's opportunity to secure a fair trial, U.S. government employees engaging in political speech (Hatch Act), sexually explicit material which is harmful to minors, non-obscene sexually explicit movies shown in violation of a zoning ordinance, child pornography, and finally, "indecent" speech.<sup>3</sup> Thus,

the broad contention that government restrictions on expression are limited to the obscenity standard are quite incorrect. Regulation of sexually-oriented expression has by no means been limited to that standard, although the degree of permissible regulation has varied with the circumstances.

The application of the "indecent" standard to dial-a-porn is supported by the Supreme Court's analysis of the First Amendment, which accords some varieties of speech (i.g., "indecent" speech) less protection than others.<sup>4</sup> The Supreme Court's rulings that certain types of expression are entitled to little or no protection under the First Amendment find their modern beginnings with *Chaplinski v. New Hampshire*, 315 U.S. 568 (1942), where the Court upheld a "fighting words" statute under which Chaplinski had been convicted for calling a policeman "a God damned racketeer" and a "damned fascist." *Id.* at 569. Justice Murphy's rationale for upholding the statute against a First Amendment attack is set forth in the following excerpt from the opinion:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. *Id.* at 571-72. The Supreme Court has embraced the position that differing degrees of protection are afforded different classes of speech. Speech protected in some contexts may in others be so harmful, or of so little value, that it can be regulated because the harm to society outweighs the expressive interests. Thus, First Amendment protection "often depends on the content of the speech." *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 66 (1976). Furthermore, as Justice Stevens has stated, "the First Amendment affords some forms of speech more protection from governmental regulation than other forms of speech." *New York v. Ferber*, 102 S.Ct. 3348, 3367 (1982) (Stevens, J. concurring), and the content of speech may determine whether or not it is protected. *F.C.C. v. Pacifica Foundation*, *supra*, at 747-48 (1978). The Court has allowed government regulation of non-obscene speech, based upon subject matter and context in numerous cases. See, *Rowan v. Post Office Department*, 397 U.S. 728 (1970) (banning erotic material from the mails at recipient request); *C.B.S. v. Democratic National Committee*, 412 U.S. 94 (1973) (upholding network refusal to accept commercial advertising); *Lehman v. Shaker Heights*, 418 U.S. 298 (1974) (upholding policy of accepting commercial advertising but refusing political advertisements on city-owned bus line); *Greer v. Spock*, 424 U.S. 828 (1976) (barring political speakers

<sup>2</sup> In its unamended pre-1983 form, § 223 prohibited the use of the telephone to make "any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent . . ." 47 U.S.C. § 223 (a)(1)(A). This precise language was upheld as constitutional in *United States v. Lamplsey*, 573 F.2d 783, (3rd Cir. 1978). Hence, the prohibitions on "indecent" telephone language in § 223 has already passed constitutional muster.

<sup>3</sup> See, "Where Do You Draw the Line?", ed. Victor B. Cline (Brigham Young University Press, 1974).

<sup>4</sup> See, L. Tribe, *American Constitutional Law*, § 12-18 (1978); Krattenmaker & Powe, "Televized Violence: First Amendment Principles and Social Science Theory," 64 Va. L. Rev. 1123, 1207-1212 (1978); Stone, "Restrictions of Speech Because of its Content: The Peculiar Case of Subject Matter Restrictions," 46 U. of Chi. L. Rev. 81 (1978); Note, "Young v. American Mini Theatres, Inc.: Creating Levels of Protected Speech," 4 Hastings Const. L. Quarterly 321, 344-54 (1977); "The Supreme Court, 1975 Term," 90 Harv. L. Rev. 58, 200-205 (1976).

from a military base); *Jones v. North Carolina Prisoners Union*, 433 U.S. 119 (1977) banning in-prison solicitation of membership in a prisoners union); *Young v. American Mini Theatres, supra*, and *Renton v. Playtime Theatres, Inc.*, U.S. , 89 L.Ed.2d 29, 106 S.Ct. (1986) (placing zoning restrictions on the location of adult theatres); *F.C.C. v. Pacifica, supra*, (prohibiting radio broadcast of indecent programming); *Board of Education v. Pico*, 457 U.S. 853 (1982) (certain books may be removed from a high school library because of their vulgarity); *New York v. Ferber, supra*, (banning non-obscene sexually explicit depictions of minors); *Ginsberg v. New York*, 390 U.S. 629 (1968) (banning distribution to minors of non-obscene material which is "harmful to minors"); *Bethel School District No. 403 v. Fraser*, 478 U.S. , 92 L.Ed.2d 549, 106 S.Ct. (1986) (upheld restriction on indecent sexually suggestive language in a political speech by high school student); *City of Newport v. Iacobucci*, 479 U.S. , 93 L.Ed.2d 334, 107 S.Ct. (1986) (upheld city ordinance banning non-obscene nude or nearly nude dancing in bars).

It is important to recognize that laws restricting "indecent" or "obscene" speech are not directed at a particular viewpoint. They proscribe only the mode or form of expression, not any ideas the "indecent" language or pictures may purport to convey. If the speaker is concerned with ideas, he can escape the penalty by expressing them in some other form. The Court has recognized that content is separable from form and that other modes of expression are virtually always available. Restrictions on "indecent" or "obscene" speech do not preclude advocacy of any ideas such speech might otherwise convey. For example, prohibitions on "indecent" telephone recordings may be compared with a lawyer who, in open court, addresses the judge in "indecent" terms. Rules against that sort of speech will undoubtedly be enforced by the judge (holding lawyer in contempt). The Court recognizes that other more acceptable means of objecting to the judge are available and the lawyer must use them. As the Court stated in *Pacifica*: A requirement that indecent language be avoided will have its primary effect on the form, rather than the content, of serious communications. There are few, if any, thoughts that cannot be expressed by the use of less offensive language. . . . At most . . . [i]t will deter only . . . patently offensive references to excretory and sexual organs and activities. . . . [T]hey surely lie at the periphery of First Amendment concerns. 438 U.S. at 473 n.18.

Since March of 1983, when dial-a-porn was first commercially marketed, countless children have been exposed to it. It constitutes an attractive nuisance in every home in America where children are present. There is no completely effective way to prevent children from being exposed to "indecent" or "obscene" dial-a-porn so long as it is lawfully and commercially marketed. Make no mistake, dial-a-porn providers care little whether a caller is a child of 9 or an adult of 19—their motive is profit. Children are being injured every day through "indecent" dial-a-porn.

The Supreme Court has repeatedly held that where the interests of children are at stake the government is fully justified in regulating non-obscene material. This significant governmental interest in the protection of minors has been identified in a number of cases. See, *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944) ("[a] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens"); *New York v. Ferber, supra*, 756-57 ("a states in-

terest in 'safeguarding the physical and psychological well-being of a minor' is "compelling" and justifies banning non-obscene sexually explicit depictions of minors); *F.C.C. v. Pacifica, supra*, 749 (government interest in the "well-being of its youth" sufficient to ban all indecent broadcasting to children, as well as adults).

In *Ginsberg v. New York, supra*, the Supreme Court upheld a ban on the distribution of non-obscene sexually explicit material to children. The prohibition on distribution of such "indecent" material to children is supported by the exact same interest present when "indecent" dial-a-porn is exposed to children. The "governments interest in the 'well-being of its youth' and in supporting 'parents' claim to authority in their own household justified the regulation of otherwise protected expression." *Pacifica, supra*, at 749; *Ginsberg, supra*, at 639-40. The Court in *Ginsberg* elaborated on these compelling interests. There were two governmental interests which justified limitations on the availability of sexually explicit ("indecent") material to children. First, the Court noted that "constitutional interpretation has consistently recognized that the parents claim to authority in their household to direct the rearing of their children is basic in the structure of our society," and that parents and others responsible for children's well-being "are entitled to the support of laws designed to aid discharge of that responsibility." *Id.*, at 639. Second, the Court stated that "government has an independent interest in the well-being of its youth." *Id.*, at 640. The Court declared that:

While the supervision of children's reading may best be left to their parents, the knowledge that parental control or guidance cannot always be provided and society's transcendent interest in protecting the welfare of children justify reasonable regulation of the sale of material to them. It is, therefore, altogether fitting and proper for a state to include in a statute designed to regulate the sale of pornography to children special standards, broader than those embodied in legislation aimed at controlling dissemination of such material to adults. *Id.* Indeed, Justice Stewart, in his concurring opinion in *Ginsberg*, at 649-50, provided an additional theoretical justification for stricter regulation of dissemination of sexually explicit "indecent" material to minors:

I think a State may possibly determine that, at least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees. As the Court more recently stated, the government's interest in "safeguarding the physical and psychological well-being of a minor" is "compelling." *New York v. Ferber, supra*, at 756-57 (emphasis supplied).

Today, children are suffering injury through exposure to sexually explicit "indecent" dial-a-porn. Thus, "society's right to adopt more stringent controls on communicative materials available to youths than on those [only] available to adults" is well established. *Pacifica, supra*, at 757 (Powell, J. concurring) (quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 212 (1975)); See also, *Miller v. California, supra*, at 36 n. 17; *Interstate Circuit, Inc. v. Dallas*, 390 U.S. 676, 690 (1968); *Jacobellis v. Ohio*, 378 U.S. 184, 195 (1964). No member of the present Court has dissented from this principle. Indeed, in the recent case, *Bethel School District No.*

403 v. Fraser, 478 U.S. , 92 L.Ed.2d 549, 106 S.Ct. (1986), the Court made emphatic the government's ability to ban sexually indecent speech to children even in the context of a political speech. The Court emphasized that bans on indecent speech have been upheld repeatedly where the welfare of children was at issue. Citing Thomas Jefferson, the Court stated:

The Manual of Parliamentary Practice, drafted by Thomas Jefferson and adopted by the House of Representatives to govern proceedings in that body, prohibits the use of 'impertinent' speech during debate and likewise provides that "[n]o persons is to use indecent language against the proceedings of the House. Jefferson's Manual of Parliamentary Practice, §§ 359, 360, reprinted in Manual and Rules of the House of Representatives, HR Doc. No. 97-271, pp. 158-159 (1982). 92 L.Ed.2d at 557 (emphasis added). In banning "indecent" speech in the schools, the Court thus noted that Congress itself bans "indecent" speech during congressional proceedings.

The governmental right to restrict access to non-obscene but "indecent" material even to adults, when it is sufficiently harmful to children, is a key part of the Court's rationale in the landmark *F.C.C. v. Pacifica Foundation* case.\* Radio and television broadcasting, like the telephone, is "uniquely accessible to children." *Id.*, at 749.

The Court's willingness to deny access to non-obscene material to adults when children would otherwise be harmed was demonstrated in *Board of Education v. Pico*, 457 U.S. 853 (1982). In *Pico*, the Court remanded with instructions for the lower court to determine whether improper motivations had tainted the Board's removal of certain books from a high school library. The First Amendment would be offended if the court found the books had been removed with intent "to deny respondents access to ideas with which petitioners disagreed." *Id.*, at 872. On the other hand, "an unconstitutional motivation would not be demonstrated if it were shown that petitioners had decided to remove the books at issue because those books were pervasively vulgar." *Id.*, at 871 (emphasis supplied). *Pico* identifies another context in which government may restrict dissemination of indecent materials to children, as well as adults.

Probably the most frequently cited case in opposition to the use of an "indecency" standard is *Butler v. Michigan*, 352 U.S. 30 (1957), with its oft-quoted assertion that the government may not "reduce the adult population . . . to reading only what is fit for children." *Id.*, at 383. In a brief opinion the Court struck down a criminal conviction under a manifestly overbroad Michigan statute that forbade the publication, sale or other distribution of any publication, writing, picture or other thing, including any recordings, containing obscene, immoral, lewd or lascivious prints, pictures, figures or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth . . . *Id.*, at 381. The Court correctly ruled that the law was overbroad and "not reasonably restricted to the evil with which it is said to deal." *Id.*, at 383. It is significant to note that Michigan had another statute specifically proscribing the distribution of erotic materials to minors, but that statute was not before the Court. *Id.*

The more recent *Pacifica* Court limited the *Butler* case by distinguishing it. In a

\* Bookstores and motion picture theatres, for example, may be prohibited from making indecent material available to children." *F.C.C. v. Pacifica Foundation, supra*, at 749 (explaining *Ginsberg*).

\* The Court also rested its holding on the "pervasiveness" of the medium which carries the "indecent" material to children, discussed *infra*, 438 U.S. at 748.

real sense, of course, *Pacifica* bans the broadcast of "indecent" material to adults as well as children. However, the Court ruled that unlike *Butler*, the F.C.C. order did not "reduce adults to hearing only what is fit for children" because adults "may purchase tapes and records to go to theatres and nightclubs to hear these words." *Pacifica*, supra, at 750 n. 28; and see, Powell, J. (concurring) at 760 ("The Commissions holding does not prevent willing adults from purchasing Carlin's ["indecent"] records, from attending his performances, or, indeed, from reading the transcript reprinted as an appendix to the Courts opinion"). Clearly, this analysis is squarely applicable to "indecent" recordings heard over the telephone. They are easily available to adults from other sources and their removal from the telephone (where they are exposed to children) would not "reduce adults to hearing only what is fit for children." Indeed, the Court itself analogized "indecent" broadcasting with "indecent" telephone language, stating that neither is given "constitutional immunity" to "avoid a harm that has . . . taken place." *Id.*, at 749. The Court cited as justification for its holding the need for newly enacted Congressional legislation against "obscene or profane" telephone language. *Id.*, at n. 27.

One must remember that the *Butler* statute prohibited the distribution of all material "unsuitable" for minors no matter what the source or media. It made it impossible for adults to obtain the material anywhere. As in *Pacifica*, the dial-a-porn prohibition would deal only with one medium which is uniquely hurtful to children. As Justice Powell stated in his *Pacifica* concurrence:

In most instances, the dissemination of this kind of degrading speech to children may be limited without also limiting willing adults access to it. Sellers of printed and recorded matter and exhibitors of motion pictures and live performances may be required to shut their doors to children, but such a requirement has no effect on adults access . . . The difficulty is that such a physical separation of the audience cannot be accomplished in the broadcast [or telephone] media. . . . [B]oth adults and unsupervised children are likely to be in the broadcast or [dial-a-porn] audience, and the broadcaster [or provider] cannot reach willing adults without also reaching children. *Id.*, at 758-59 (Powell, J. concurring). Justice Powell went on to state that "[t]his, as the Court emphasizes, is one of the distinctions between" such media and others "justifying a different treatment . . . for First Amendment purposes." *Id.*

As in *Pacifica*, the prohibition of "indecent" dial-a-porn involves a limited form of regulation of a single medium whose adult and youth audiences cannot be physically separated. *Butler*, on the other hand, applied to all media and embraced a wide-ranging (and vaguely defined) subject matter. Moreover in *Butler*, dissemination of the materials to children could generally be controlled at the point of distribution without denying access to willing adults. This is impossible with broadcast radio (as in *Pacifica*) and dial-a-porn.

Indeed, the very facts present in *Butler* limit it to the situation wherein the distributor of "indecent" material can differentiate between adults and children. This obviously cannot be done when the child telephones a tape-recorded message. Clearly, the ruling that better applies to dial-a-porn is *Pacifica*. Telephones are precisely like radio and television because of their easy ac-

cessibility to children and the virtual impossibility for parents to monitor their use.<sup>7</sup>

The Court in *Pacifica* also reasoned that "broadcast media" has a pervasive presence in the lives of all Americans. "Patently offensive, indecent material presented over" such a pervasive media "confronts the citizens . . . in the privacy of the home, where the individuals right to be left alone plainly outweighs the First Amendment rights of an intruder." *Id.*, at 748 (citing *Rowan v. Post Office Dept.*, supra, banning erotic material from the malls at recipients request). This analysis is squarely applicable to dial-a-porn. It is of the utmost importance to be cognizant that dial-a-porn is presently in the home whether the homeowner wants it or not. Today one cannot have telephone service in the privacy of one's family environment without being required to have dial-a-porn with it. Families with children must give up telephone service to be "left alone" from exposure of their children to this "intruder." Is there really a medium more "pervasive" than the telephone? We know that children (especially teens) spend countless hours on the telephone. At present, no family can be left alone in their own homes without the harmful nuisance of indecent or obscene dial-a-porn.<sup>8</sup>

Further, an argument can be made that because the telephone system is a regulated and protected system serving such a vital public function, it should be held to a higher standard of conduct than, say, a newspaper. In essence, the telephone system carries out the government function of providing telephone communication to all citizens who choose to have it at a rate set by governmental regulatory bodies. They are given de facto monopoly protection by the government and often use publicly owned property to carry out their business. In return for such privileged status, the telephone system has a public trust. The trust is breached when the telephone system enters the pornography business by exposing "indecent" dial-a-porn to virtually every child in America. Cf., *United Church of Christ v. F.C.C.*, 359 F.2d 994, 1003 (D.C. Cir. 1966) (opinion authored by Chief Justice Burger, then a member of the District of Columbia Court of Appeals).

IV. UNDER 47 U.S.C. § 223 (b) (5), THE ATTORNEY GENERAL MAY LAWFULLY ENJOIN TRANSMISSION OF DIAL-A-PORN WHICH VIOLATES § 223 (b) (1) (A) OR (1) (B)

Without question, the government may lawfully restrain a party's violation of an obscenity statute through the use of a civil injunction proceeding, as permitted by 47 U.S.C. § 223(b)(5). Such a procedure, whereby the government files a civil action peti-

<sup>7</sup> Also, one cannot discount the fact that *Pacifica* in 1978 is the most recent expression of the Supreme Court's will. No member of the 1987 *Butler* Court remains on the Supreme Court bench. Indeed, Justice Stewart, who dissented in *Pacifica*, is no longer a member of the Court.

<sup>8</sup> Recently the Supreme Court affirmed the case *Jones v. Wilkinson*, 800 F.2d 989 (10th Cir. 1986), aff'd. U.S. (March 23, 1987). There the 10th Circuit held that the federal Cable Communications Policy Act of 1984, 47 U.S.C. § 521-559, had preempted the states from regulating "indecent" cable programming. 800 F.2d at 990-91. Contrary to many published media accounts of this case, the issue here was "preemption" by the federal government, not the constitutionality of the "indecent" standard. Still, it is pertinent to point out that a family can have non-cable broadcast television in their home if they choose. They cannot have a telephone in their home without dial-a-porn. Unlike television, the telephone choice is either no telephone or dial-a-porn. Indeed, since deregulation of cable, many companies are competing for the same customers. The telephone subscriber has only one choice—a local telephone company which imposes dial-a-porn on its subscribers.

tioning the court to issue an injunction against the future distribution of specifically named or identified materials has been categorically approved by the Supreme Court. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 50-55 (1973); *Kingsley Books v. Brown*, 354 U.S. 436, 441 (1956). The holdings of *Paris Adult Theatre* and *Kingsley Books* are clearly applicable to § 223(b)(5) and permit the Attorney General to proceed against violations of this statute by injunction.

The Supreme Court has set forth the guidelines for such an injunction proceeding in several cases. Specifically, the Court has held such a proceeding is constitutionally permissible when, as here, the burden of proof and of initiating the judicial review is the governments, and the dial-a-porn provider is allowed to transact pending a full adversary judicial proceeding, with a prompt final judicial review available. *Paris Adult Theatre*, 413 U.S. at 55; and see *Blount v. Rizzi*, 400 U.S. 410 (1971); *Freedman v. Maryland*, 380 U.S. 51 (1965). Subsection 223(b)(5) is fully supported by authority of the Supreme Court.

#### V. CONCLUSION

It has been demonstrated that the open availability of dial-a-porn is a serious problem for adults, as well as children. It has further been demonstrated that attempts to regulate dial-a-porn have been a complete failure since the start of this "industry" in 1983. This present situation can only be corrected if the present legislation is enacted by Congress. The legislation will obviously receive vigorous opposition from the dial-a-porn businesses themselves—this is to be expected since they stand to lose millions of dollars if an enforceable § 223 is enacted. However, this memorandum of law has clearly shown that § 223 as amended is firmly supported by legal precedent, and by a tradition for the protection of children from this type of harm. In conclusion, there is no legal obstacle to the passage of this legislation by Congress, and its enactment will finally allow for the regulation of this dial-a-porn industry and its often "illegal" product.

Respectfully submitted,

BENJAMIN W. BULL,  
Legal Counsel.  
PAUL C. MCCOMMON III,  
Legal Counsel.

KNIGHTS OF COLUMBUS,  
Washington, DC, April 20, 1988.

Hon. JESSE HELMS,  
603 Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: The 1.4 million members of the Knights of Columbus and their families strongly support your efforts and those of our colleagues to enact into law the Dial-A-Porn amendment to H.R. 5. In our view the overwhelming vote in the House last night as well as the earlier unanimous vote in the Senate reflects not only the broad bi-partisan support in Congress for this measure, but its widespread support among the American people. We urge the Senate to approve this measure without delay.

We just as strongly oppose any parliamentary maneuver which would create the illusion of progress on this needed reform while in reality resigning it to inaction for the remainder of this Congress.

As you know, the Knights of Columbus remain steadfastly committed to the welfare of America's families, especially when the moral health of our nation's children is endangered. As the Supreme Knight, Virgil Dechant, recently stated, "The cynical en-

trepreneurs responsible for the rise of pornography-for-profit have already done grave injury to countless individuals and to the fabric of society itself."

Again thank you for your efforts in this matter.

With kindest regards,

CARL A. ANDERSON,  
Vice President for  
Public Policy.

Mr. HARKIN. Mr. President, I rise in support of the conference report regarding the Augustus F. Hawkins-Robert R. Stafford Elementary and Secondary School Improvement Amendments of 1988. This bill, which has been worked out by the House/Senate conferees, will enhance the Federal effort to aid preschool, elementary, secondary, and adult education programs.

The bill is a prudent investment in the future of our Nation. It reaffirms the important role the Federal Government plays in supporting efforts by teachers, principals, administrators, and members of school boards to educate our children to become the future workers, artists, and leaders of our country. It also recognizes the central role parents play in educating their children.

I am particularly pleased that this bill contains numerous substantive provisions that address the unique needs of children residing in rural America. For example, the bill includes the provisions of S. 1778, the Rural Education Opportunities Act, which I introduced on October 8, 1987. This bill authorizes the Department of Education to establish technical assistance centers that will focus exclusively on the needs of rural school districts. These centers will provide evaluation assistance; consultation, and training aimed at helping local school districts improve the quality of the education provided to educationally deprived children participating in chapter 1 programs who reside in rural areas or attend small school.

Although I am pleased with the substantive provisions concerning rural areas included in the bill, I am, quite frankly, extremely distressed and disappointed that the Senate receded to the House on the chapter 1 concentration formula. The concentration formula included in the Senate bill was developed after many hours of work. It reflected the proper balance among regional urban/rural and State interests. As the Senate report states:

The committee believes that such a balance has been struck with this compromise approach.

During the conference, it was recognized by virtually all Senators and Congressmen that the Senate version provided more funds than the House version to those school districts in greatest need of extra assistance, which after all is the purpose of this provision. For example, under the Senate version, Chicago would receive \$19.7 million; in contrast, under the House version Chicago would only receive \$15.8 million. Similarly, under

the Senate version the entire State of Iowa would receive \$2.3 million; in contrast under the House version the State would only receive \$1.1 million.

Notwithstanding my disappointment with the concentration formula, I do support this bill. I am especially proud of my committee's resolve to reaffirm our commitment to assist school districts meet the special needs of our educationally disadvantaged children residing in poor areas; to strengthen our resolve to address the problems of illiteracy and dropouts; and to expand our resolve to address the needs of our preschool population.

As chairman of the Subcommittee on the Handicapped, I am also pleased with the numerous provisions included in the bill providing special focus on the needs of children and youth with handicaps. For example, the Jacob K. Javits Gifted and Talented Students Education Act of 1988 specifies that in the administration of the program the Secretary must give the highest priority for, among other things, the identification of gifted and talented students who may not be identified through traditional assessment methods such as individuals with handicaps and to conduct programs for such children.

In addition, the amendments to chapter 2, the Education Block Grant, provide a greater degree of targeting on at-risk students and students for whom providing an education entails higher than average costs, which include among others, handicapped students. Additional FOCI of chapter 2 are programs of acquisition and use of instructional and educational materials, for example, library books—and other innovative projects that would enhance the educational programs of the school—for example, technology. Captioning for the hearing impaired certainly qualifies as a technology that may be used in innovative ways to enhance literacy.

Furthermore, the fund for the Improvement and Reform of Schools and Teaching Act authorizes the Secretary of Education to make grants and enter into contracts designed to improve educational opportunities for and the performance of elementary and secondary school students and teachers by, among other things, helping at risk children meet higher educational standards and providing incentives for improved performance. The term "at risk" children certainly includes handicapped children.

The need to look beyond access for handicapped children to high quality instruction designed to maximize a handicapped child's potential was one of the major recommendations of a recent congressionally mandated report entitled "Toward Equality—Education of the Deaf" prepared by the Commission on Education of the Deaf. The recommendations of the Commission should be given serious consideration and be made applicable to all handicapped children.

The amendments to the State-operated program for the handicapped, also known as Public Law 89-313, which I developed with Senator STAFFORD, will go a long way toward ensuring that handicapped children in a State participating in Public Law 89-313 programs receive a free appropriate public education in accordance with all of the applicable provisions in part B of the Education of the Handicapped Act. It also reaffirms the appropriateness of using Public Law 89-313 funds to provide early intervention services for handicapped infants and toddlers, consistent with the provisions of part H.

In closing, I believe that the bill will enhance our children's educational opportunities and our Nation's future prosperity.

Mr. METZENBAUM. Mr. President, I rise in support of the conference report on H.R. 5, aptly named the Augustus F. Hawkins and Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. This omnibus legislation extends and improves a range of important Federal programs which support elementary and secondary education. It also includes several new initiatives to address such vital areas of national concern as high school dropouts and adult illiteracy. This important measure represents the kind of Federal commitment we need to promote excellence in our schools and to ensure that all our Nation's students have access to a quality education.

Chapter I is the largest program of Federal aid to elementary and secondary education. This legislation will improve chapter I in several important ways. The bill encourages additional appropriations each year so that all eligible children can be served by 1993, and concentrates additional funding on the neediest school districts. It also includes a new program for preschool children and provisions which will help schools to provide basic skills training for secondary students and to prevent students from dropping out.

I am particularly pleased that the conference report includes my amendments to encourage parental involvement in the chapter I program. These amendments, along with the other strong parental involvement provisions in the bill, will provide parents with a whole range of opportunities to learn about and participate in the program, so that parents and educators can work together to ensure that children in the program will succeed in school.

The legislation will also continue support for other important education programs, including the chapter II block grant, impact aid, magnet schools, science and math programs, and the Adult Education Act. In addition, the conference report provides for several new initiatives that address some very critical areas. New programs will focus on preventing high school dropouts, improving the basic skills of

at-risk secondary students, providing help for illiterate adults, and enhancing programs for the education of gifted and talented children.

I am also appreciative that the other conferees agreed to include my proposal providing \$2 million to support the National Center for Research in Vocational Education at the Ohio State University through the end of the year. These funds will allow the center to continue operating until a new grant competition can be held to determine the final recipient of the 5-year grant award. This will save jobs and permit the center to continue providing important services to vocational educators nationwide.

Mr. President, this legislation will help our schools to provide the best possible education for all our children. It represents a wise investment in the future of our Nation, and I urge my colleagues to support the conference report.

Mr. SIMON. Mr. President, I want to join my distinguished colleagues, the senior Senator from Rhode Island, who chairs the Subcommittee on Education, Arts and Humanities, and the senior Senator from Vermont who serves as our ranking Republican member. Both have served the cause of education well over the years and 1987-88 is no exception. And 1988 is a year in which many who have been strangers to the sanctuary of education have come to pledge their commitment and offer sacrifices on the educational altar in an election year. Not true with Senators PELL and STAFFORD. Steadfast in their support and conscientious in their commitment to the cause of academic excellence, educational equity, and equal opportunity, they are not new converts now that it has become fashionable to support education in our Nation.

I especially want to acknowledge the outstanding work on this bill and on many other pieces of education legislation of my friend BOB STAFFORD, who will be retiring from this body at the end of the 100th Congress. In fact, many of us would not even have most of the existing Federal education program if it were not for BOB STAFFORD and the work he did in 1981 to preserve many of these vital programs from the budget ax of the Reagan administration. Although they have recently "found religion"—recommending a total education department budget of \$21.2 billion or \$851 million above the fiscal year 1988 appropriations level. We will lose a real trooper, an accomplished public servant, and an acknowledged leader in the field of education.

Mr. President, I want to say only a few words about H.R. 5, the Hawkins-Stafford School Improvement Act.

#### EFFECTIVE SCHOOLS

On September 20, 1987, Senator STAFFORD and I introduced S. 1815, the Effective Schools Development in Education Act. A body of research had validated that some schools, including

those in poor areas and with disadvantaged students, have been successful in improving student achievement. The "effective schools" research has discovered that certain characteristics—strong leadership, emphasis on the acquisition of basic skills, and a safe and orderly school environment, among others—are shared by these effective schools and can be replicated in other schools. The effective schools section of H.R. 5 attempts to build upon this research by targeting grant funds—under chapter 2 of the Education Consolidation and Improvement Act—to be used to plan, implement, support, and otherwise encourage effective schools programs within that State.

#### STRENGTHENING CHAPTER 2

On the same day, we also introduced S. 1699, the Elementary and Secondary Reform Amendments of 1987. Its basic purpose was to more effectively target limited Federal education funds on a fixed set of high priority Federal programs. I am pleased that S. 373, as it passed the Senate included that necessary tightening of the chapter 2 program by establishing a series of priority programs for spending chapter 2 funds. The conference report reflects those priorities.

#### PROGRAM IMPROVEMENT

One of the most difficult issues to resolve was the whole question of providing for appropriate accountability, among teachers and school administrators, for student progress in the chapter 1 program. While there was much rhetoric about "State takeovers" of local school district programs—this was blown way out of proportion—the conferees did reach agreement on a critical section coauthored by Senator QUAYLE and myself, which will ensure that student progress is effectively monitored and, when needed, additional resources are brought to bear to assure that poor children who benefit from the chapter 1 program succeed like all other schoolchildren.

We are requiring program improvement plans to be developed for schools experiencing difficulty in achieving stated program goals. Each local educational agency (LEA) must develop a plan if any of the following conditions occurs for one year: One, a school does not show substantial progress toward meeting the desired outcomes described in the LEA's application in terms of acquiring the basic and more advanced skills that all children are expected to master; or two, the school shows no improvement; or three, the school shows a decline in aggregate performance. The joint statement of managers makes clear the meaning of the second option "no improvement." I would like to be sure the record is clear about the "substantial progress" phrase in terms of meeting the desired outcomes. That term means enough annual progress in each of the 3 years of the program to achieve those outcomes by the end of the 3-year cycle contemplated under program improvement. Obviously, some situations may

take longer and the statute recognizes that possibility. Thus, children would be closing the gap between their current skill levels and those expected for all children of their age or grade level at a pace of one-third each year.

Mr. President, I am especially indebted to the leadership of the Council of Chief State School Officers, the State Boards of Education, the National PTA, the National Urban League, the Children's Defense Fund, the National Urban Coalition, and especially the Harvard Center for Law and Education for their work on the school improvement section of this bill. We need more people who care about students and less about paperwork and their own prerogatives in the school policy making process.

#### RACIALLY ISOLATED SCHOOLS

I was also concerned about the growing tendency for large numbers of minority, poor children to be concentrated in large, urban school districts with the least amount of resources to pay for the cost of their education. Many of these school districts receive insufficient or no chapter 1 funds to help them. Some qualify for the Magnet Schools Program, but many do not because they do not have a current court order, nor an administrative decree from the Education Department. Ironically, the District of Columbia—ordered to desegregate its schools in 1954—Bolling versus Sharpe—does not qualify for magnet schools funding. I strongly supported creation of a new part B in the Magnet Schools Program to serve racially isolated schools. Improving the academic program at all schools in a school district may be the only way to attract whites back to the public schools. It works in Chicago; it is working at Banneker School here in the District; but Benjamin Banneker in Washington, DC, and Whitney Young in Chicago should be the norm, not the exception. Every child ought to have the same chance to learn and their educational future ought not be determined simply by where they live. The conferees accepted a modified version of the part B, magnet schools concept, which I hope will begin to address the problem.

Mr. President, I want to thank Senators HATCH, KENNEDY, and WEICKER for their leadership on this issue.

Finally, Mr. President, I want to commend the staff members of all Senators on the Labor and Human Resources Committee. Many of them have worked for more than a year on this important bill. I especially want to commend David Evans, Ann Young, and Sarah Flanagan of Senator PELL's staff and Ellin Nolan and Becky Rogers of Senator STAFFORD's staff, as well as Bud Blakey, Judy White, and Pat Fahy of my own staff.

Mr. DODD. Mr. President, America cannot afford to lose even one human mind to ignorance, poverty or neglect. It is vital, for the economic security of our Nation, to focus our legislative en-

ergies on services that will benefit the development of today's children. An educated, trained work force is the foundation upon which we must build, to assure future economic success and stability and international competitiveness. Today, we can bolster America's foundations by supporting the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary Education Improvement Amendments of 1988, H.R. 5.

H.R. 5 encompasses many vital education programs that will extend the historic commitment to eliminate poverty, promote educational equity and improve access for disadvantaged children. To help this Nation cope with future demographic and technological changes, several new programs for early intervention, basic skills and literacy and math and science education are included in the package. I am proud to have had a hand in authoring the initiatives on dropout prevention, workplace literacy and model foreign language to help students prepare to work in our transitional economy.

Today, we are confronted with a national dropout rate of 30 percent, and up to 60 percent in some inner cities. One out of four children are living in poverty. And, 35 percent of children entering school this year are forecasted to end up on welfare by the age of 18.

We cannot afford to let the children living in poverty, the children of illiterate parents or the children of immigrants who speak little English slip through the cracks of our education system. These children deserve an education that will prepare them for the demands of the workplace and offer many of them an avenue out of poverty. Programs that offer literacy skills, basic skills development, special language, math and science instruction and incentives for youth to stay in school, are the most important means of preventing the creation of a permanent underclass of Americans and building a strong, dynamic, literate, trained workforce.

By the year 2000, we will need these youth to run our country. There will be fewer Americans entering the work force in the year 2000. Our Nation's economic strength and competitiveness will depend on the participation of groups that traditionally have the highest rates of unemployment and poverty, the greatest family obligations and the lowest levels of education and job experience. The economic challenges that America will face in the future will demand an unprecedented level of workplace skills and productivity from all Americans.

While this bill is a major step in the right direction, it is only one of many steps necessary to make investments in our future. With one out of four children living in poverty, we must examine our education and welfare systems, our Nation's job market and the availability and affordability of child care for unemployed and low income

parents. Our ability to solve the Nation's education problems and develop a work force equipped to face the challenges of the future, depends on much more than the educational opportunities available to children.

Before concluding my remarks, I would like to thank Senators PELL and STAFFORD for their leadership on this bill. While my colleague from Rhode Island, CLAIBORNE PELL, will be around next year to lead the crusade for education policy, I must pay tribute to my Republican colleague from Vermont, ROBERT STAFFORD, Senator STAFFORD, over the last 20 years, has made invaluable contributions to this Nation through education policy. His commitment and leadership will be missed.

Mr. QUAYLE. Mr. President, I rise in support of H.R. 5, the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, as amended by the House. This version of H.R. 5 represents the agreements of the conference committee on the education portions of the bill and includes the legislative language passed by the Senate regarding the dial-a-porn issue, which would prohibit obscene or indecent communications by telephone.

I am in full support of this dial-a-porn prohibition, which was originally offered by Senator HELMS, and am very pleased that the House of Representatives voted 379 to 22 to add the Helms language to the conference committee agreements on the education bill.

Dial-a-porn phone messages are one of the most invidious inventions of our times and it is repugnant that children and teenagers have had access to them. I am hopeful that the Helms language is successful in eliminating these messages from our telephone system.

H.R. 5, as rewritten by the conference committee, is a good bill and deserves the full support of the Senate. Throughout the long negotiations on this bill, Senators PELL and STAFFORD worked closely with other members of the Committee on Labor and Human Resources and protected the Senate position with the House.

I am particularly pleased by the provisions in the bill to strengthen program improvement of the chapter 1 program. If students are not showing improvement in their academic skills, the local school will be helped by the school district and the State so that student achievement occurs. We must ensure that the money being spent on this important program is resulting in increased achievement for the disadvantaged students participating. Otherwise, chapter 1 fails its mission and fails the students it is designed to help.

H.R. 5 includes many program improvements for chapter 1 and chapter 2, as well as the Bilingual Education Program, the Magnet Schools Program, and the Adult Education Act. This bill continues the Federal com-

mitment to providing education to disadvantaged children and those with special needs with increased authorization levels. This bill will help many thousands of students to improve their academic skills and become productive and contributing members of our society.

H.R. 5 is titled the "Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988", a tribute to two legislators who have spent most of their careers working to benefit the American educational system and our children. I am very pleased that these two individuals have been recognized, especially Senator STAFFORD, who will leave this body at the end of this session. My friend from Vermont has been a tireless supporter of education, and we will miss his guidance and dedication in this area.

I would also like to commend Senators PELL, KENNEDY, and HATCH for their hard work on this bill. They have all made this a better bill by being open to the concerns of other Senators and have worked in a bipartisan fashion, resulting in a consensus bill.

Again, Mr. President, I rise in support of H.R. 5 and urge its adoption by my colleagues.

Mr. KERRY. Mr. President, the conference report on H.R. 5, approved today by the Senate, is the culmination of an extraordinary, successful bipartisan effort. This historic 5 year authorization is a forward looking bill which seeks to deal with the immediate problems of elementary and secondary education. It also provides special assistance to help us with the complex, long-term problems facing us today and into tomorrow.

Chapter 1, the backbone of the Federal effort to enhance the educational opportunities for the children of low-income families, is greatly improved in H.R. 5. The institutionalization of poverty we have witnessed during this administration has hit our young students particularly hard. There is increasing evidence that the poor and disadvantaged children of this Nation are tragically left behind by an education system which is failing us. We can neither afford nor tolerate this waste of human potential. This Nation needs the resources of all of our young people and disadvantaged students deserve the dignity and opportunity of an education which will lead to jobs and equity in our society. The flexibility and initiatives built into chapter 1 will provide much needed assistance to our schools.

Chapter 2 has been similarly strengthened in H.R. 5. The block grants for State and local education agencies are important to meeting special needs in areas from at-risk students to gifted and talented students, from teacher training to materials purchasing. The bill contains flexibility here while maintaining the formu-

la split of 20 percent to the State agencies and 80 percent to the local agencies.

A number of other programs authorized here will help us deal with some of the most pressing problems in our schools today. The math and science teacher training will move us forward in providing the kind of faculty support necessary for strengthening national performance in math and science. The Star Schools Program, an initiative of the senior Senator from Massachusetts provides an opportunity for bringing the best of new technology to teachers and classrooms.

The reauthorization through 1993 of the Drug Free Schools and Communities Act of 1986 is key to providing our communities with the resources for educating students and parents on the risks of drug and alcohol abuse. No single issue threatens the future of America's youth more than drugs. I am especially pleased that H.R. 5 requires the Secretaries of Education and Health and Human Services to develop and coordinate a national education program of drug education. Similarly the assistance to State and local organizations on drug education and the maintenance of five regional centers on the issue are important. The record shows that drug education works and while budgetary limits constrain what can be done here, these programs are important for many schools and communities.

Other provisions included in the bill have been amply discussed in passage of the Senate bill, Mr. President. Let me briefly call attention to the conference work in impact aid, bilingual education, Indian education, vocational education. Difficult issues have been addressed and resolved in a manner which will allow workable solutions for most problems.

Other important programs included in this comprehensive bill are noteworthy. Magnet schools, women's educational equity, immigrant education, the child development program and the disability demonstration project are all examples of efforts to respond to the unique needs of students. Each and every one of these programs has demonstrated success in meeting those needs and keeping students in school and learning.

In summary, Mr. President, I commend the conferees for a job well done. It is especially appropriate to thank Senators PELL and STAFFORD who have labored nearly 2 years to accomplish today's passage. Their leadership has been exemplarily and we are all in their debt.

Mr. DASCHLE. Mr. President, it is with great pleasure that I rise today to voice my strong support for the conference agreement on H.R. 5, the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. I truly believe that this agreement reflects the best combination of Senate and House bills.

Never before in our history has education been more critical to our nation's economic well-being. In order to compete in today's highly technological world, it is essential that we have a well-educated and well-qualified populace. Widespread access to education is the Nation's best hope for economic growth and social progress. The Federal Government has no greater role than assuring access to a quality education.

In reauthorizing nearly all Federal elementary and secondary programs, H.R. 5 reaffirms the Government's commitment to providing a quality education for all Americans. This bill makes a number of changes that will improve the basic educational services that are provided to students, especially at-risk students, throughout the country.

The centerpiece of this legislation is the Chapter 1 Program for educationally disadvantaged children. Nearly 90 percent of the Nation's schools receive basic grants, which are distributed to school districts where at least 10 children come from families with incomes below the poverty level. Separate concentration grants are targeted to districts with a high number or percentage of low income students. The formula for distributing concentration grants is particularly beneficial to rural schools.

The conference agreement wisely retains the block grant approach to the Chapter 2 Program. This program gives States and local school districts the flexibility to design services to meet their specific needs. Local education agencies may use these funds to improve education in several broad areas including programs for at-risk students, gifted and talented, teacher training, and suicide prevention.

After a 6-year decline in impact aid funds, I am pleased to report that the trend is finally reversing. The bill creates a new formula for the Part A Program of grants and authorizes significant increases in funding each year. The Part B Program of payments for the construction of facilities in federally impacted districts is extended and the budget authority is increased yearly. The gains we have made in impact aid policy this year are significant, and it is my hope that they will be expanded upon in future years.

Mr. President, I am particularly pleased with the Indian education provisions included in the conference agreement. Last summer I held a hearing on education at Pine Ridge Reservation in South Dakota. This hearing was held on S. 1645, a bill I cosponsored and the bill which ultimately became the Indian Title of H.R. 5.

By way of background, the Pine Ridge Indian Reservation has the unenviable distinction of being the poorest county in the State of South Dakota and the United States. Unemployment is at 85 percent, and all the social ills that go along with high unemployment are also prevalent—astro-

nomic high rates of alcoholism, infant mortality, suicides, violent crimes, etc.

Further, 9 of the 25 poorest counties in the Nation are now in South Dakota, and 8 of these are on or near Indian reservations. All but 3 of the 25 counties saw per capita income fall between 1981 and 1986, an indication that the Nation's poorest are getting poorer.

But amidst all this poverty with all its unmet needs are some real signs of hope and progress—primarily in the area of education.

Because the Indian community has been making great strides in this area, I was particularly pleased to be associated with the Select Committee on Indian Affairs' efforts to develop the Indian title of H.R. 5 and to have able to conduct a hearing in my own State on its largest reservation.

Since the 1970's, South Dakota has seen five tribally controlled community colleges flourish—providing further education in a supportive environment close to the reservation. The South Dakota Sioux are acknowledged nationally for their leadership in this area. Cheyenne River, Standing Rock, Sisseton Wahpeton Community Colleges and, of course, Sinte Glaska and Oglala Lakota offer real hope to those Indian communities they serve.

One of the items contained in the Indian title of this bill, is a program creating a gifted and talented program for Indian children. The program would establish resource centers in two tribal colleges that would provide assistance to Indian schools in developing educational programs for gifted and talented children. One of these resource centers would be located at Sinte Gleska on Rosebud Reservation in South Dakota.

Clearly, quality education is one of the highest priorities of my Indian constituents, if not the highest—despite many unmet needs. The following are some of the provisions in the Indian title which will enable Native Americans to reach some of their goals in education.

First, the bill would permit the establishment of a tribal department of education to oversee schools run by the BIA and by tribes. This provision will enable the Oglala Sioux at Pine Ridge to actively plan and better coordinate all of its educational programs. It would further the concept of self-determination by insuring the maximum participation of the Oglala in determining their future educationally.

Second, the bill will prohibit the Interior Secretary from closing any BIA-funded schools without tribal or congressional approval and bar changes in BIA education regulations over the next 14 months.

Third, the bill will strengthen provisions in existing law that require BIA to consult with tribes before making any changes that would affect schools

for Indian children. This was in response to an attempt by the BIA to transfer control of BIA-run schools to local educational agencies or other organizations.

Fourth, the bill would authorize \$70 million for grants for projects to meet the supplementary educational and cultural needs of Indian school children. The bill also reauthorizes demonstration programs for such things as curriculum development and dropout prevention; fellowship grants for Indian students; and adult education programs.

Fifth, the bill would create a program for early childhood development, requiring BIA to coordinate existing educational and social programs for very young children. The bill authorizes \$15 million a year for the program.

Sixth, the bill would provide authority for a White House Conference on Indian Education to occur between September 1989 and September 1991.

Seventh, the bill would require the Office of Indian Programs within the Department of Education to give priority to Indians when hiring.

If America is to regain lost ground in world markets and maintain economic security, we must continue the Federal commitment of dollars to education. A sound education is perhaps the most fundamental tool America can offer its citizens. The enactment of this conference agreement will go a long way toward making this country stronger and better because it will provide the children of our Nation with the opportunity to receive the quality education to which they are entitled.

Mr. PELL. Mr. President, I move that the Senate concur in the House amendment to H.R. 5, the elementary and secondary bill.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. PELL. I move to reconsider the vote by which the motion was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### BILL INDEFINITELY POSTPONED—H.R. 4401

Mr. PELL. I ask unanimous consent that Calendar No. 615 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. The bill deals with dial-a-porn, which is contained in H.R. 5 just acted on.

I thank the Chair.

#### WARTIME RELOCATION OF CIVILIANS

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER (Mr. ADAMS). The Senator from Nebraska,

Mr. EXON. Mr. President, I have been listening with great interest to my friend and colleague from Virginia, and I thank him for his well-said remarks. They were particularly on point.

I would just like to urge my colleagues to move forward on the bill that I am a cosponsor of that has been spearheaded by my friend and colleague, Senator MATSUNAGA, from Hawaii.

Since I have had a little personal experience in this particular area, that I will recite briefly, and while I do not think that we Americans should take pride in condemning ourselves, sometimes confessing a sin and being sorry for what you once did is good for the soul, and this might be a time that this is also good for the Nation.

As a young man growing up in South Dakota, when the rattle of World War II was on its path, and followed by the sneak attack by the Japanese Government on our important naval and military facilities in Hawaii, I remember well when the news came out that the Japanese were being rounded up, especially on the Pacific Coast, in the national security interests of the United States, and I remember well at that time that my father and my grandfather that I was very close to sitting there and discussing with me, a young lad that they expected would be involved in the military conflict in the years to come. They were rationalizing and discussing whether or not it was proper for the United States to round up Japanese who lived especially on the west coast and intern them—I believe that was the term that was used at that particular time, and I thought my grandfather and my father had lost all reason.

We obviously were at war with the Japanese and to my young mind it only made sense that since we were at war with the Japanese we were at war with the Japanese on the Japanese mainland and also with the Japanese who lived in America, because you see in Lake Andes, SD, we did not have any Japanese. In my young mind I thought that was the proper thing to do.

Oh, I rationalized that some of them, a few of them probably were good Americans, but from my logic it only made sense that most of them were agents of the Japanese Government, and while I thought that there may be a few Japanese-Americans who were good, not very many of them could have been good and if we abused a few that was a part of the situation that we found ourselves in at that time and, of course, everybody at that time detested the Government of Japan.

My father and my grandfather, who had a lot more wisdom than I did, said this reminded them of World War II. While we did not have any Japanese in Lake Andes, SD, my hometown, we had an awful lot of Germans because the German stock were the ones that

came over and homesteaded in my particular home area and were some of the outstanding citizens, of course, in South Dakota at that time and have been ever since.

But they told me about World War I and how anyone with a German name back in World War I regardless of whether they were good Americans or not were suspect and if anyone ever spoke German during that time they were convinced that they were certainly, if not an agent of the German Government, they had to be sympathetic to them or they would not speak German.

How idiotic can we be? How idiotic was I looking back on it that we did what we did as a Nation to Japanese-Americans who were just as good Americans as anyone else, and we have ample testimony of that right here in the U.S. Senate in both Senator MATSUNAGA and his colleague, Senator INOUYE, both wounded, decorated, veterans on the side of the United States, like so many Japanese-Americans were in World War II.

I only say this, Mr. President, because shame on us for assuming just because we did not have German names in 1917, shame on us as Americans just because we did not have Japanese names in 1941 that we took it upon ourselves to decide what was right and what was wrong regardless of the rights of the individual.

I am proud of the fact that this Senator from Nebraska is supporting the measure before us. Oh, it is going to cost some money. That is right. But certainly it is not going to cost very much money compared to what we did and the shame of what we did to the Japanese-Americans at the beginning of World War II.

I remember another personal factor that I do not think my friend and colleague, Senator MATSUNAGA, knows about. But a few months after that talk I had with my father and grandfather that I related to you, that vibrant American boy named JIM EXON, with the right color eyes and the right color skin, found himself in the service of the United States and before I served overseas 2 years fighting the Japanese, I ended up in the signal corps camp in California. It was Camp Pinedale, and when we got there it was the sorriest looking camp I had ever seen or ever imagined. It was nothing more than a group of tar paper covered shacks. Some improvements were made while I took my basic training at that particular signal corps camp.

But, nevertheless, one of the reasons we did not like it was the fact that this was a Japanese internment camp where a sizable number of the Japanese who were originally gathered up were dumped into this dump of an internment camp.

As I understand it, the reason that they made way and put the Signal Corps people in there was the fact that they were not sure that it was