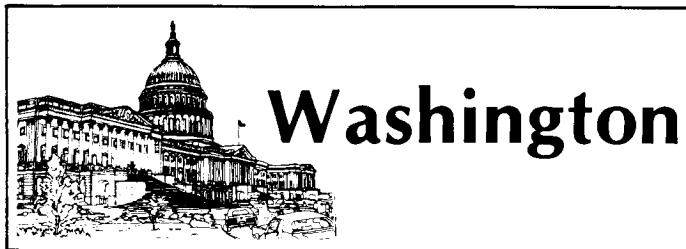


CAPE OUTLOOK



Whither ED?

In the grand old American "docey-doe" style of progressing by taking two steps forward and two steps back, the Department of Education seems to be on its way to becoming an education foundation.

On January 31, 1980, candidate Reagan said, "We should abolish the Department of Education and end unnecessary federal controls over education."

On August 4, 1981, Secretary Bell suggested that the Department be turned into a foundation rather than disperse its functions among other parts of the bureaucracy, merge it with the Department of Health and Human Services or turn it into a sub-cabinet agency.

On September 24, the President proposed dismantling the Department, saying, "By eliminating the Department of Education less than two years after it was created, we can not only reduce the budget, but ensure that local needs and preferences rather than the wishes of Washington determine the education of our children."

On November 2, *Education Week* reported that Administration officials could not reach agreement on the proper way to take the Department apart.

On November 13, according to *Education Week*, the Cabinet Council on Human Resources discussed a "decision memorandum" recommending the foundation alternative, under which most of ED's functions would be retained under one roof-top.

On November 14, the *Washington Post* announced that the Administration had narrowed its options to the foundation and dispersal choices.

On November 18, the *Post* reported that the President had deferred a decision on the Department's future pending the sounding-out of Congress on the foundation idea.

On December 2, *Education Daily* described a meeting between the Secretary and "a group of state leaders" at which he said that, while key

White House figures had approved his foundation plan, President Reagan still wanted to test public reaction to it before giving it his sanction.

Congress, of course, must approve any plans to abolish the Department. Some key congressional leaders, Sen. William Roth (R-Del.), Sen. Robert Stafford (R-Vt.), Rep. Jack Brooks (R-Tex.), and Rep. Carl Perkins (D-Ky.), continue to support a Cabinet-level office. However, Sen. Roger Jepsen (R-Iowa) has written a widely-circulated letter urging its demise, and Sen. Dan Quayle (R-Ind.) introduced a bill (S.1821) calling for the destruction of the Department and the creation of a small education-assistance agency in its stead. H.R. 1779, introduced by Rep. G. William Whitehurst (R-Va.), proposes the termination of the Department and prohibits the President from creating a new executive department to replace it.

Groups in the private sector are divided on the issue. Conservative organizations, such as the Taxpayers Education Lobby, want to abolish the Department and thus remove the federal presence from schools. The Department of Education Coalition, an alliance of over 140 groups, including the National Association of Elementary School Principals and the National Association of Secondary School Principals, wants to keep the Department at the Cabinet level to maintain a federal focal point for education.

CAPE's position, as outlined in a letter from Executive Director Robert L. Smith to Secretary Bell on November 10, is as follows:

"After considerable discussion, the Board determined that it would, at this time, remain neutral as to the question of the proper government level of the education functions. At the same time, it concluded that it opposed a fragmentation of functions.

"From our standpoint, a dispersal of operations would make it far more difficult for the small private sector to deal effectively with its various responsibilities throughout the entire spectrum of federal educational interests.

"We also see fragmentation as inevitably increasing the extent to which the federal education establishment becomes a patchwork of interests rather than a unity concerning itself with the good of the whole. This is a matter which encompasses economics as well as guiding philosophy.

"I trust these concerns will be considered carefully in this difficult period of retrenchment and reorganization."

"Off-Air-Taping" Agreement Reached

Educators and copyright proprietors have reached agreement on rules governing the "off-air-taping" of television programs for educational use. An Ad Hoc Committee on Copyright Law, appointed by the House Subcommittee on Courts, Civil Liberties and Administration of Justice (Robert W. Kastenmeier, D-Wis., Chairman), and chaired by August W. Steinhilber, Associate Executive Director of the National School Boards Association, has released the set of compromise guidelines after two years of negotiations.

Committee members believe that the guidelines "reflect... an effective and acceptable application of 'fair use' to off-air recording and use in schools of broadcast television programs for educational purposes." The compromise involves an agreement on the part of the copyright owners to eschew bringing infringement claims against users who conform to the guidelines, and a pledge from educators to monitor their own efforts to "live up to the spirit of the law."

CAPE Executive Director Robert L. Smith, a member of the ad hoc committee, said, "The new guidelines are necessarily a compromise but they do not impair, in any real way, the continued effective use by private schools of copyrighted material."

Emphasizing that the rubrics pertain only to copyrighted materials, the committee reiterated the freedom of educators to reproduce noncopyrighted

materials "in toto" and keep them "literally forever."

While the procedures are not legally binding, committee members believe that their joint issuance represents the negotiators' carefully considered view "of how the law can be satisfactorily applied in the mutual interest of the proprietors, the disseminators, the teachers and the students." Moreover, they anticipate that courts will consider common business practice and the state of the art when interpreting an unclear legal matter, and will "look with great deference" to the guidelines in any infringement action.

The guidelines, inserted by Rep. Kastenmeier in the October 14 issue of the *Congressional Record* (pp.4750-4751), are available at a cost of \$1.00 from the National School Boards Association, Suite 600, 1055 Thomas Jefferson St., N.W., Washington, D.C. 20007.

Legislative Update

Both Senate and House are aiming for Christmas recess from December 18 to January 25.

Tuition Tax Credits

S.550 (Packwood, R-OR; Moynihan, D-NY; Roth, R-DE).

Pending in Finance Committee.

H.R.380 (Luken, D-OH) and others.

Pending before Ways and Means Committee.

Tax-Exempt Status of Private Schools

P.L.97-85, signed by President November 23, extends P.L.97-51 to December 15. This First Continuing Resolution contained IRS prohibition.

Testing

H.R.1662 (Weiss, D-NY); H.R.1312 (Gibbons, D-FL).

November hearings by Subcommittees on Post-secondary Education and Elementary, Secondary and Vocational Education. No markup set.

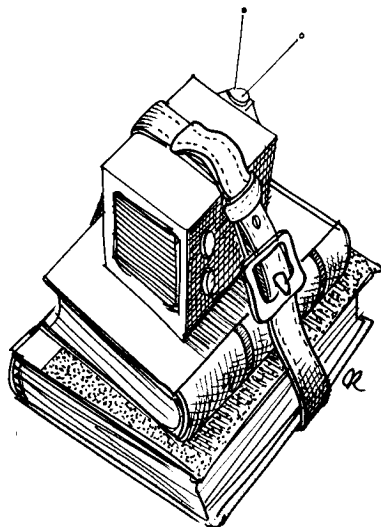
Foreign Language Training

S.1817 (Moynihan, D-NY).

Pending before Subcommittee on Education, Arts and Humanities.

H.R.3231 (Simon, D-IL).

Rules Committee action expected late January.



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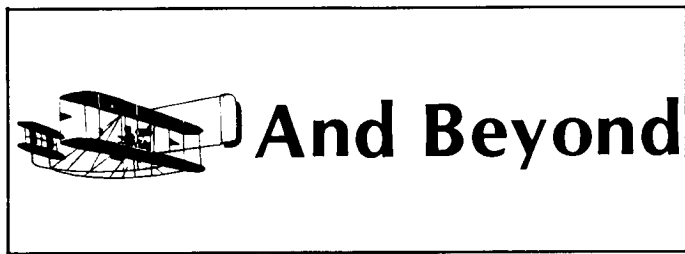
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Capenotes

... We have received a challenge grant from Mr. and Mrs. George D. O'Neill through which gifts to CAPE will be matched dollar for dollar up to \$20,000 per year for a period of three years. Gifts to CAPE are tax exempt and are most welcome.

... James Boldt, Superintendent of Schools for the South Wisconsin District has been chosen to be Secretary of Elementary and Secondary Schools of the Board for Parish Services of the Lutheran Church-Missouri Synod. He follows Marlin Schulz and Al Senske on the CAPE Board of Directors.

... The Rev. James Fanelli, Superintendent of Schools for the Archdiocese of Hartford, has been elected President of Connecticut-CAPE. He succeeds Alan Houghton, Executive Director of the Connecticut Association of Independent Schools.



Humanities Faculty Goes to School

The National Humanities Faculty, a nonprofit educational service organization, provides both public and private schools with tailor-made programs to improve teaching and learning in the humanities. Supported by grants from the National Endowment for the Humanities and other public, private and corporate sources, NHF members work with teachers and administrators of affiliate schools on areas in their humanities curriculum which need strengthening. They coordinate in-service programs consisting of on-site visits by NHF members and summer workshops and institutes for school personnel.

Present program subjects range from history, cultural studies and social studies to classical languages, science and the arts. NHF uses as its criteria for selecting programs those which have a "traditional discipline of the humanities as their central component."

Two private schools receiving grants are Akiba Hebrew Academy in Pennsylvania and St. Mary High School in Kentucky. Steven Lorch, Principal of Akiba, devised an interdisciplinary program with NHF which "develops communications and methodological connections among the disciplines... with particular emphasis on the connections between general and Hebraic studies."

St. Mary instituted a program it calls "Planet Earth, The Human Experience." This covers a two-year span during which all courses aim toward teaching not only the origins of western culture, but also the development of such societal structures as the family, religion and the city. "Our ultimate goal," explained Nancy Reed, St. Mary's project coordinator, "is, after two years, to produce a student who understands the factors which shaped his own background and that of western Kentucky."

Off the Bus in Rhode Island

Rhode Island must stop providing bus transportation beyond school district limits to nonpublic school children. (Again.) In the case of *Members of the Jamestown School Committee, et al. v. Dr. Thomas C. Schmidt, et al.*, decided October 23, 1981, U.S. District Court Chief Judge Raymond J. Pettine reaffirmed his earlier (1977) decision that the statute which provided for such arrangements "... conflicts with the Establishment Clause of the First Amendment... and must be invalidated." Finding the present law no different from the earlier offending one, he said, "... I have concluded that the present statute is essentially indistinguishable from its predecessor which was found unconstitutional in *Jamestown I.*"

The Rhode Island law failed two of the three tests customarily applied to Establishment Clause cases. Its "secular purpose" passed muster, but not so its provisions which had "the primary effect of advancing religion" or those which "created an excessive entanglement of church with state."

The statute did not, according to Judge Pettine, provide public and private school children with equal opportunities to use transportation beyond school district limits, and therefore lacked "... the benevolent neutrality required of state action in this sensitive area..." Furthermore, although defendants had submitted data to the contrary, Pettine found that "... it is more expensive to bus nonpublic school students to religious schools outside the school district than it is to bus public school students to their local schools." Thus, he reasoned, "Given the fact that sectarian school children enjoy greater options at greater public expense than their public school counterparts, the statute is constitutionally infirm."

Pettine determined that the revised transportation program went beyond its hapless predecessor in entangling church and state. Like "*Jamestown I.*" it not only required "significant administrative action between the public schools and sectarian school officials" but also created a "serious danger of causing political divisions along religious lines." (Indeed, the opinion cited several instances of public disputes between parochial school and public school parents over busing plans, causing Judge

(continued on page 4)

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Pettine to conclude that "...the potential for political fragmentation...has to some extent already been realized," thus creating a "warning signal (which) cannot be ignored. . . ."

Additional church/state interaction was found in the statute's stipulation that the Commissioner of Education examine certain characteristics of sectarian schools to see if they were eligible to participate in the busing program. The judge concluded: "Such governmental evaluation of religious practices and institutions is precisely the sort of church-state entanglement which the Establishment Clause prohibits."



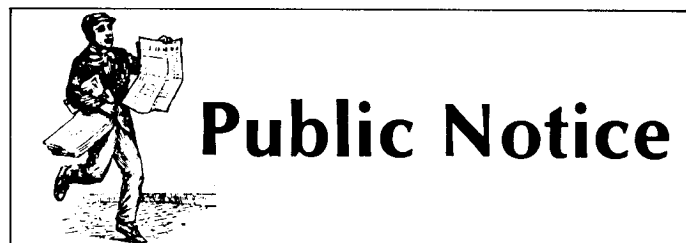
● **ED's Regulation Agenda:** The *Federal Register* of November 3 (pp.54574-54583) contains the semi-annual agenda of regulations under departmental consideration. The list is published to "encourage more effective public participation in the regulatory process by giving the public early information about pending regulatory activities."

● **EVI's New Branch:** The Education Voucher Institute now has a Washington office. The organization promotes vouchers and/or tax credits; sponsors, publishes and disseminates research on vouchers and credits; and acts as a clearinghouse for information on these issues. Washington representative Bob Baldwin may be reached at 450 Maple Ave. East, Suite 309, Vienna, VA 22180.

● **NIE Testing Information:** The National Institute of Education's free booklet, *Your Child and Testing*, is available from the Consumer Information center, Dept.520J, Pueblo, CO 81009. It provides parents with information on standardized testing.

● **NEH Program/Deadline Guide:** The National Endowment for the Humanities is distributing "An Overview of Endowment Programs for 1982-83" free of charge. It describes NEH's grants award process, principal grant-making programs, funding areas and eligibility requirements. Write Public Affairs Office, NEH, 806 15th St., N.W., Washington, D.C. 20506. 724-0388

● **Private Sector Task Force:** A President's Task Force on Private Sector Initiatives has been established to advise the President on developing, supporting and promoting private sector leadership and responsibility for meeting public needs.



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