

CAPE OUTLOOK



Budget Omits Tuition Tax Credits

"Later in the year, the administration will transmit to the Congress a plan to implement a program of tax credits for families of tuition paying students." (*Budget of the United States Government, 1983, Executive Office of the President, Office of Management and Budget, p.5-118.*)

Too little and too late, perhaps. The President's proposed budget did not provide for the revenue loss that would result from passage of tuition tax credit legislation this year, nor are there any plans, apparently, for the Cabinet Council to consider staff recommendations for such legislation until the end of February, rendering uncertain the likelihood of passage during this session of Congress.

The Secretary General of the United States Catholic Conference, in a press release dated February 9, said, "President Reagan's budget is disappointing as it applies to tax credits for education. . . . (It) fails to meet either the expectations of tuition tax credit supporters or the repeated commitments of the administration. . . . Last year the President took the position that tax credit legislation should wait until Congress acted on his first round of economic legislation. That happened in 1981. Yet the message of his new budget is that, as far as the administration is concerned, tuition tax credits are an idea whose time must still be deferred." Father Daniel Hoye continued, "I do not doubt the President's sincerity, and I realize the difficult fiscal problems his administration confronts. But the relatively minor revenue loss represented by tuition tax credits does not provide grounds for continued inaction on a matter of equity and vital importance to millions of parents."

CAPE, expressing its "deep sense of frustration," wrote President Reagan on February 10, "The single, one-sentence reference to the introduction of a tuition tax credit bill later in the session gives us precious little hope for the carrying out of your re-

peated assurances to the private school community that you will support such legislation in the 97th Congress.

"We acknowledge and support your putting the restoration of the economic vitality of the nation as your major Presidential priority. Because of this, we have continually stressed our support for a gradual phased-in, low-cost tuition tax credit program, one which will fit into stringent budget conditions.

"As you begin to hear from families and others around the country who share our fear for the fate of this legislation, I trust you will take immediate steps to redress a potentially serious breach of faith with millions of families, many of them among your strongest supporters.

"It is clear that you alone have the power with Congress to turn this situation around. We urge in the strongest terms that you do so at the earliest possible time."

Frank Monahan of the U.S.C.C. asserted, "We feel confident that once President Reagan understands the depth of the private school community's concerns, he will take whatever action is necessary to make this a priority in 1982."

Flap Continues Over Tax Exemptions For Discriminatory Private Schools

Remember the "Pushmi-Pullyu"? First seen on the pages of *Dr. Doolittle*, he has recently been sighted wandering about the Rose Garden of the White House.

Push: January 8, 1982: The Administration announced the end of the government's 12-year-old policy of denying tax exemptions to discriminatory private schools. (CAPE's strongly worded criticism of this announcement appeared in the February issue of *Outlook*, page 1.)

Pull: January 12, 1982: The Administration announced it would seek legislation to deny tax-exempt status to discriminatory private schools.

On January 18 it sent S.2024 to the Hill. But the passage of this bill through the straits of Congress may prove to be every bit as perilous as any of Dr. Doolittle's exotic voyages.

S.2024 adds a new subsection to Section 501 of the Internal Revenue Code, providing that an organization maintaining a school ". . . shall not be exempt from tax. . . if such organization has a racially

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discriminatory policy.” The definition of that term excludes “an admissions policy of a school, or a program of religious training or worship of a school, that is limited, or grants preferences or priorities, to members of a particular religious organization or belief: *Provided*, That no such policy, program, preference, or priority is based upon race or upon a belief that requires discrimination on the basis of race.”

S.2024 faces competition from other bills with opposing aims. Illustrative is S.Con.Res.59 (Sen. Gary Hart, D-Colo.) which declares, “It is the sense of the Congress that current Federal law clearly authorizes and requires the IRS to deny tax-exempt status and deductibility of contributions to schools that practice racial discrimination.” In other words, to Hart and the 28 co-sponsors of his Resolution, legislation is not needed. Or, as Rep. Andy Jacobs (D-Ind.) said in introducing a similar Resolution, “If it ain’t broke, don’t fix it.”

Many legal scholars, as well as Justice and Treasury Department officials of past administrations and civil rights groups, claim that there is ample legislative and court precedent for the long-standing IRS policy (specifically, Title VI of the Civil Rights Act of 1964 and the *Green* decision of 1971) and therefore, no additional legislation is needed to bolster it. The Administration, however, says, “There is neither a constitutional nor statutory basis for the practice followed by the IRS since 1970.” Thus “. . .the IRS—not Congress—was determining, on the basis of national policy, how the taxing laws should be administered and enforced.”

Legal justification for the IRS policy is just one of the many problems to be met in connection with this most complex issue. There are First Amendment considerations: would the Free Exercise Clause be contravened by withholding tax-exempt status? Or would the Establishment Clause be violated by bestowing it? Then there is the question of separation of powers, a fundamental principle of American government. Should agencies be allowed to interpret the laws they administer? Are they “governing by administrative fiat” if they do so? Can the Executive call for legislation in the face of a consistent pattern of court interpretations of existing law? Finally, there is the issue of “politi-

cal motivation” on the part of the administration: was all this done, as suggested by Sen. Daniel Patrick Moynihan (D-N.Y.) “to placate two Senators and one Congressman”? Or did it eventuate, as posited by Deputy Secretary of the Treasury R. T. McNamar, from a view of “. . .politics only in its broadest and best sense—the mandate of the Reagan Administration to assure that the government of the United States acts responsibly and in accordance with the laws enacted by Congress.”

The next episode is yet to be written. It has many possibilities. Congress could pass a compromise resolution in the light of the opinion of Senate Finance Committee Chairman Robert Dole (R-Kan.) that it would be “very difficult” to pass the Administration’s bill. It could adopt a resolution holding any legislation unnecessary. It could even repeal existing appropriations riders and permit the IRS to issue guidelines as to what constitutes a “discriminatory” private school.

Whatever Congress decides to do, one hopes that the “Pushmi-Pullyu” will not interpret its action as an invitation to prance on the Capitol steps.

No Zoning by Association

The Supreme Court has let stand a Florida ruling that a parochial school must obtain its own zoning permit rather than rely on the license granted to its parent church. On January 11 the Court declined to review the case of *Faith Baptist Church v. City of Boca Raton*.

Woodlands Christian Academy had contended that since it was an integral part of its parent church, it should not have to obtain separate municipal zoning permission. As quoted in *Education Daily* of November 16, school attorney Jon Ferdinand queried, “. . .Who’s going to be the lord over your church; is it going to be the government or is it going to be Jesus Christ?”

The response of the Florida court system and, by indirection, the U.S. Supreme Court, would seem to be, in this instance at least, “the government.” A citation of the 1980 trial court opinion in *Education Daily* quoted Judge Thomas Sholts as finding that “the religious orientation of the Woodlands’ use does not exempt that use from the requirement to obtain a conditional use approval from the city.”

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A coalition of 15 national organizations serving private schools (K-12)

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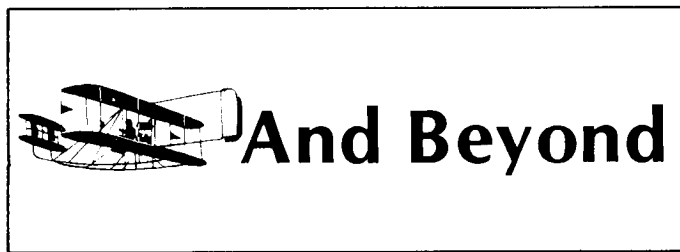
Social (In)Security for High School Seniors

High school seniors who are counting on Social Security benefits to help pay for their postsecondary education are being advised by some of their guidance counselors to enroll in colleges before May 1, 1982. On that date, if not already registered as full-time students in institutions of higher learning, they will become ineligible to participate in the program called "Social Security Checks for Students Aged 18-22."

This program for the children of the retired, disabled and deceased, which began in 1965 with a disbursement of \$165 million to 206,000 students and grew by 1981 to distribute \$2.3 billion to 760,000 young people, was cut short last summer when Congress voted to begin phasing it out in the spring of 1982 and end it completely by 1985.

According to *Education Week* (January 1, 1982), the Social Security Administration has declined to notify potential applicants of their change in status, in part because "costs, logistical problems and bureaucratic delays made it impractical" to do so, but also because it does not want to put itself in the position of intimating that students could slip in under the wire by enrolling in colleges before May 1.

The Social Security Administration was unable to pinpoint the number of private school students who have participated in the program. Its press officer explained to *Outlook* that since the checks are sent directly to a student's residence, the government has no notion of what kind of school the recipient attends.



Private Schools in England

The following review of the English scene at the end of 1981 came to Outlook from Tim Devlin, Director of the Independent Schools Information Service in London:

Earlier this year the outlook in London was beginning to look a little bleak for the future of Britain's 2,500 independent schools which educate half a million pupils—about six per cent of the total school population.

In July a joint committee of the Labour Party and the Trades Union Congress published a plan

which, if implemented, would first starve the schools out of public funds and then introduce legislation to phase them out within about 10 years of the party winning a general election.

While the Conservative Government, which favours independent schools, is struggling with the country's economy, the Labour Party is having its internal difficulties too.

The middle ground has been swiftly occupied by the new Social Democratic Party, which with the Liberals has a commanding position in the opinion polls. Its policies on education will not be known until October 1982. A committee has been set up to produce the first draft and will undoubtedly examine the position of independent schools. A recent poll of 9,000 S.D.P. members showed that a majority were against abolition of the private sector, but most favour the removal of tax advantages accruing to the schools by virtue of their charitable status.



The new party may well favour the ending of the Assisted Places Scheme which the Government introduced successfully last September under which about 5,000 children (mostly aged between 11 and 13) won grants to enable them to attend independent secondary (high) schools. First reports indicate that the scheme is working well and many low income families have taken advantage of it.

The schools are taking no chances. The Independent Schools Joint Council, the umbrella organisation representing 1,300 schools with 400,000 pupils, has set up an action committee to protect the schools from the Labour threat. Legal advice has been taken over whether the schools would have any protection under the European Convention of Human Rights. Governors and former pupils are being asked to help. The Independent Schools Information Service is building up its supporters' group which now has about 25,000 members. A video-tape has been commissioned to show the case for independent schools which it is hoped will become available to American audiences.



Capeline

● **Education Policy Fellowship Program:** EPFP is accepting applications for fellowships that provide an opportunity to work under the direction of selected educational policymakers at the federal, state and local levels. EPFP is a non-degree program for outstanding mid-career individuals. Write before March 26 to Application Coordinator, EPFP, Institute for Educational Leadership, 1001 Conn. Ave., N.W., Suite 310, Washington, D.C. 20036.

● **NEH Youth Grants:** April 15 is the deadline to apply for grants for the National Endowment for the Humanities out-of-school humanities programs for youth under age 21. Write Linda Moore, Program Officer, Youth Projects, NEH, MS 351-C, 806 15th St., N.W., Washington, D.C. 20506.

● **Montessori, Texas Style:** The November, 1981 issue of *American Education* (pp.19-22) contains an article on a Montessori public school, the Dodson Elementary School in Houston. Written by Nancy Stancill, the story is entitled "Houston's Strongest Little Magnet" and describes the school as "the most popular special-curriculum school in Houston's magnet program."

● **Foreign Student Study:** The National Association for Foreign Student Affairs, under an ED grant, is studying the "effective use of foreign students in U.S. el/sec schools as resources for increasing the knowledge and understanding of American students about other cultures, nations and peoples and their interdependence." If you have worked with foreign students in the K-12 setting, please contact Linda A. Reed, K-12 Project Director, NAFSA, 1860 19th St., N.W., Washington, D.C. 20009.



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