

CAPE OUTLOOK



Tuition Tax Bill Sent to Senate

The Senate Finance Committee voted 11-7 on September 16 to report the tuition tax credit bill to the full Senate. The decision to approve the bill came after Committee members wrestled for two days with a vast assortment of amendments to S.2673, the Administration's bill. In its final form, the bill embodied a compromise on its thorniest provision, the one dealing with antidiscrimination.

The Committee voted to approve some "impact reduction amendments" designed to bring the cost of the credit program in harmony with current fiscal realities. These changes delay the effective start of the program to a date after July, 1983; phase out the credit at an income level of \$40,000 and halt it altogether for families earning over \$50,000; and reduce the maximum amount of the credits from \$500 to \$300 (by 1985), beginning with \$100 at the end of 1983 and rising to \$200 in 1984.

A "refundability" amendment was added to the bill to be offered on the Senate floor. This would enable parents to receive tuition refunds even though they are too poor to pay any taxes.

The debate's most controversial moments centered around the antidiscrimination provisions of the bill which deny tax credits to parents sending their children to racially discriminatory private schools. The Committee overwhelmingly approved Administration-sponsored amendments strengthening the enforcement and penalty aspects of these provisions. But thereafter, by a narrow margin, it also sanctioned amendments proposed by Sen. Bill Bradley (D-N.J.) giving concurrent authority to the Internal Revenue Service and the Attorney General to enforce the anti-bias provisions.

The reaction of Committee Chairman Bob Dole (R-Kan.) to the acceptance of the Bradley amendments, however, was to warn that they would "endanger the fragile coalition currently supporting the bill."

The problem was resolved by the unanimous adoption of a Dole-sponsored "effective date amendment" which delays the beginning of the tax credit program until the Attorney General certifies that either Congress or the Supreme Court has mandated that under Section 501(c)(3) of the tax code, racially discriminatory private schools are prohibited from receiving tax exemptions.

The Committee also added to the bill a provision requiring that to be eligible to receive a credit, parents must send their child to a "school, attendance at which satisfies the compulsory education law of the state in which the child resides or in which the school is located."

ECIA Regs Published; Congress Disapproves

With two weeks of their publication, the rules governing the Educational Consolidation and Improvement Act's Chapter I and II were vetoed by Congress. At issue was the application to those rules of GEPA, the General Education Provisions Act. Legislative interest in GEPA is high, particularly because it allows Congress to review and veto such education regulations. As far as the Education Department is concerned, however, GEPA does not "generally apply" to its Chapter I and II rules.

Rep. Elliott Levitas (D-Ga.) summed up Congressional feeling on the matter, saying, "This action by the Department of Education is clearly outside the letter and spirit of the authorizing statute. . . . The Department's action here interferes with the Congressional duty to review regulations—the 'mini-laws' the bureaucracy thrusts upon the American public."

Various options are available to the disputing parties: ED could ignore the Congressional disapproval, or it could capitulate and issue new rules stating that GEPA does apply. Congress could amend the ECIA and make GEPA's applicability explicit. It could also sue the Department, or resort to withholding program funds.

At press time, a staffer of the House Elementary, Secondary and Vocational Education Subcommittee told *Outlook*, "We are still waiting to see what the Department will do," while a spokesman for the Department said, "We have no comment on whether the ECIA regs are in effect. However, we are considering amendments to the regulations."

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But What of the Regs?

The regulations themselves had been well received by the private education community upon their publication on July 29. Speaking for the Office of Private Education in the Department, Special Assistant Kenneth C. Terrell evaluated the rules for *Outlook* readers:

"The final ECIA regulations reflect the commitment of the Department of Education to insure equitable participation of students enrolled in private schools. For example, the final Chapter One rules retain the long-standing Title I requirement that school districts consult with private school officials when administering the program. This requirement provides a means for improving the relationships between public and private officials at the local and state levels.

"The Chapter Two regulations also provide a framework for insuring that private school students participate equitably. LEAs must provide services to private school students even if their needs are different from those of public school students. Furthermore, expenditures for public and private school students must be equal, taking into account the relative needs of those children. Under both chapters, the Secretary may implement a 'bypass' if necessary to serve private school students."

Private Schools and the NDN

"The relationship of the National Diffusion Network to the world of private education reminds one of the circumstances of a spinster lady: always ready but never called upon," or so it was described to participants at the annual Washington meeting of the NDN. Randall Chaudoin of the Boyd Christian School in McMinnville, Tenn., cautioned Network administrators on June 25, "If you want to talk to private schools about NDN programs, don't tell 'em you're involved with the federal government."

In fact, private schools have made relatively good use of the Network since its inception in 1974, when it came into being as a federally-funded middleman between schools who had found successful solutions to problems and those who were still searching for them. Under the system, programs adjudged "exemplary" by a government review panel become available for adoption

by public and private schools. In 1980-81 alone, 620 private schools in 38 states began using NDN programs.

One program which has met with particular success in private schools is "Every Child a Winner," developed by Martha Owens in Ocilla, Ga. It is an individualized elementary physical education curriculum involving developmental, creative movement experiences centered on space and body awareness. All children, regardless of physical or mental abilities, participate successfully in its daily offering of games, dance and gymnastics.

The plan has enjoyed success in a wide variety of private school settings. Jacqueline M. Bernhardt of St. Mark's Lutheran School wrote *Outlook*, "...the principles of movement ed which first attracted me are what guide my teaching. Every child should be involved; there should be no win or lose situations. . . ." Debbie Wilson of the Virgin Islands Montessori School explained, "The . . . approach to movement in young children is most compatible with Montessori philosophy. . . . The lessons lead to self direction, as well as developing listening abilities. . . ."

Outlook readers may obtain additional information about the NDN by writing the Network at the Riviere Bldg., Room 802, 1832 M St., N.W., Washington, D.C. 20036.

Capelog

Among its recent activities on behalf of its constituency, CAPE:

. . . has taken part in a continuing series of conferences in the White House and with Senate Finance Committee members and staffers in connection with the progress of tuition tax credit legislation.

. . . is sponsoring, on September 20 and 21, a seminar in Washington on "Successful Women in Private Education." Female teachers, superintendents, principals, guidance counselors and other administrators from private schools and organizations from every part of the country will attend.

. . . received assurances from Congressman Carl Perkins, Chairman of the House Committee on Education and Labor, that he will support amendments to the school lunch program legislation which currently prohibits participation by private schools charging \$1500 or more tuition. CAPE and several member organizations had pointed out the unfairness this posed for the many low-income students

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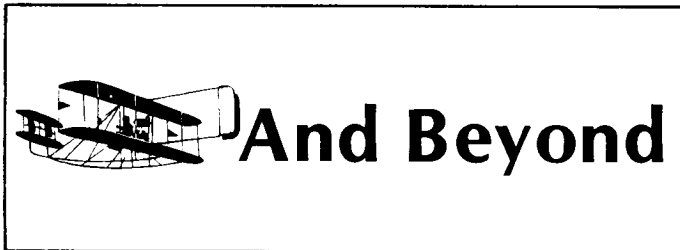
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eligible for this program who attend private schools irrespective of the tuition charges.

...was recently awarded a contract from the Department of Education to conduct a technical study in anticipation of a major work on minority involvement in private education.

...is working with the National Association of Private Schools for Exceptional Children in monitoring responses of the education community to the new PL 94-142 regulations.



October 25, "Day of Dialogue"

Educators for Social Responsibility have named October 25 a "Day of Dialogue" in the hope that on that Monday, schools across the nation will set aside their everyday learning tasks and focus instead on questions of the nuclear arms race and the dangers of nuclear war.

ESR, a national organization of teachers, school administrators and parents based in Cambridge, Mass., believes it vital that students be able to air their concerns about the dangers of nuclear war and that educators and parents begin to realize that fear of such war might be taking its toll on children's development.



As described by ESR, the goal of the day is "to set in motion a process of raising nuclear issues and developing and integrating age appropriate materials in schools across the country." The organization will provide schools with a planning manual containing organizing details, suggested

classroom activities, background reading and resource lists.

ESR is located at 639 Massachusetts Avenue, Cambridge, MA 02139.

Kentucky Private School Busing Takes New Path

A Kentucky County Attorney has found a way to provide school transportation for private school children. Under an 11th hour accord reached at the beginning of the school year, Henderson County Attorney William Markwell and representatives of the local Catholic school system agreed to a plan by which the county will pay 88% of the busing costs involved, with the schools picking up the remaining 12% of the charges.

Markwell had originally proposed that the state board of education provide transportation for private school pupils from their homes to the nearest public school, with the county or parochial school system taking responsibility for the leg of the trip from public to private school, but his plan was deemed invalid by the state's attorney general.

As an agent of the state, a school district is prohibited by the Kentucky Constitution from spending any school monies for the transportation of nonpublic school children, but a county is permitted to use its funds in this way.

The Unconstitutionality of Sharing

The Shared Time and Community Education programs involving the Grand Rapids, Mich., school system in a cooperative relationship with nonpublic, religiously oriented schools have been declared invalid by the U. S. District Court for the Western District of Michigan. In his August 16 opinion in the case of *Americans United for Separation of Church and State v. School District of the City of Grand Rapids*, Judge Richard A. Enslin found the programs violative of the Constitution's First Amendment.

During the last school year, the \$3 million program offered remedial and enrichment classes to over 11,000 private school students in 41 schools. Teaching took place in private school classrooms which had been leased to the school district. Although the classrooms were "desanctified" to ensure the absence of religious symbols or artifacts, and public school instructors using them were required to post signs designating the areas "public school classrooms," virtually all of the students and most of the teachers involved were affiliated with private schooling.

After examination of the philosophy and practices of the participating Catholic, Christian and Lutheran schools, Judge Enslin wrote, "The conclusion is inescapable that the religious institutions receiving instructional services from the public

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schools are sectarian in the sense that a substantial portion of their functions is subsumed in the religious mission."

Testing the programs against the traditional three-pronged standard of constitutionality, the judge found that although the arrangements had a "manifestly secular purpose," they ran afoul of the First Amendment by advancing religion and entangling the government in religious affairs.

\$1 Purchase of Public School Barred to Private School

In a decision which gives new meaning to the old adage, "You can't get something for (almost) nothing," a Connecticut judge declared invalid the \$1 sale of a surplus public school building to a Jewish day school.

The Gan, Inc. school in New Haven had originally offered to pay \$30,000 for the Roger Sherman School, but the City Board of Aldermen voted to reduce the sale price to \$1.

In the case of *Annunziato v. New Haven*, decided on August 24, U.S. District Judge Ellen Bree Burns ruled that, while neither the purpose nor the primary effect of the city's original decision to sell the property to The Gan would have constituted impermissible aid to the religious school, "The purpose of the city's decision to lower the price to \$1 was to benefit the Gan." Thus, "The primary effect of the city's decision was to advance religion." She concluded, "The sale of the Roger Sherman School to The Gan for \$1 after The Gan offered \$30,000 for the property violated the Establishment Clause because there was no secular purpose in the rejection of the offer and the primary effect of the action was to relieve The Gan of \$29,999 expected indebtedness."

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