

CAPE OUTLOOK



School Lunch Cap Raised

In the markup of H.R. 7, the "School Lunch and Child Nutrition Amendments of 1985", House Education and Labor Committee members approved an amendment that would increase the private school tuition ceiling for participation in the national school lunch program to \$2500. Offered by Representative Dale Kildee (D-MI) and supported by the Democrats on the Committee the amendment raises the \$1500 cap established in the 1981 Omnibus Budget Reconciliation Act. Given the tenor of the current budget debate, this compromise is a practical temporary solution for those schools that have not already been forced out of the program by the original limitation provision. Yet it continues the practice initiated in 1981 of focusing assistance on institutions rather than students.

CAPE member schools strongly oppose the idea that a private school's participation in any federal program should be based on its tuition charges. The federal programs involving private schools historically have been targeted for students, not schools, under the child benefit theory. The basic assumption in the institutional focus is that students in schools that charge more than \$1500 in tuition come from wealthy families and really are not in need of a government subsidized lunch. This is far from the truth. Hundreds of schools are spending millions of dollars on scholarship aid for needy students. The current tuition allowance hurts exactly the students the Programs are intended to benefit.

CAPE's correspondence to members of the House Education and Labor Committee emphasized that "the introduction of tuition as a limiting factor is a very ill-advised and misleading precedent and it should not be perpetuated in legislation. Moreover, in our opinion it should be repealed."

Moynihan Counsels Nonprofits to be Indignant

New York's Senator Daniel Patrick Moynihan enjoined members of Independent Sector at their spring meeting on May 11 to work as they have never worked before in support of keeping the charitable giving provisions in place in the tax code. He warned that the tax bill fight will be long and that private sector organizations will probably end up being "disappointed." He reminded his listeners that what is at stake are the "Boy Scouts, their parents and churches, hospitals, educational institutions" and all the rest of the organizations "which make this a democracy" and which serve the pluralistic needs of our society. The federal government has reduced over the past 4 years by about 20% its own support of those institutions, health, education, child care, etc. which it now proposes "to clobber" by changing the tax code to diminish their private support. It is a situation about which the Senator said we should be "indignant" when we visit our Representatives.

On the day of the meeting, there were press reports suggesting the Treasury Department and White House had decided to support the continuation of current charitable giving tax provisions.

Independent Sector is a Washington umbrella organization for over 608 nonprofit organizations of every kind and works on issues such as tax laws, nonprofit mail rates, lobbying rules, nonprofit organizational management, fundraising and related matters which are important to the well-being of the entire private sector. CAPE, NAIS and USCC are members as is the Lutheran Council in the USA and the Lutheran Resources Commission.

Copyright Law

Private school administrators and teachers are often plagued by nagging questions about Copyright Law and what they can and cannot make use of for their classes and related school use. The Educator's Ad Hoc Committee on Copyright Law, of which CAPE is a charter member, regularly deals with such questions as they come up as a result of litigation, legislation or in other ways.

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Compulsory Education — A mis-match

In the 3rd of a series of papers on legislative and constitutional issues involving private and public schools, Patricia Lines, Director of the Law and Education Center of the Education Commission of the States in Denver covers "Compulsory Education Laws and Their Impact on Public and Private Education." Earlier papers dealt with constitutional issues surrounding regulation of private education, the historical treatment of religion in public schools and compulsory education, and the combined impact of these two factors on the development of private schools. The subject has received far too little formal treatment although compulsory attendance laws are constantly being referred to and are the chief instrument for state efforts to "regulate private schools."

Lines' essential thesis is that good education can not be compelled. Compulsory education is an oxymoron (an expression containing two opposite or contradictory words). Compulsory education requirements should be kept at a minimum and education should be "so enticing... students will want to take advantage of it." The paper is the result of nearly 120 interviews with education leaders in 15 states including legislators, chief state school officers, state school board members, private school educators, home school parents and others.

Lines reviews the compulsory attendance requirements in all the states through charts and, at the end of the report, she frames the major elements of a model compulsory attendance law.

Because the much bigger and more pertinent question in education for parents and educators alike is not whether Johnny goes to school but where, it is time to seriously ask ourselves if compulsory attendance laws written when attendance was the problem are still useful. Pat Lines has contributed mightily to that consideration.

For copies of "Compulsory Education Laws", write to the Education Commission of The States, 1860 Lincoln St., Suite 300, Denver, CO 80295; cost \$12.

The group recently developed a policy statement on "fair use" for reference by its member organizations and asked for comments. Because of the importance to our schools of this document, OUTLOOK is printing it in its entirety. We would welcome comments to share with other Committee members:

"Protect Fair Use"

"It is legal to copy without permission for educational and scholarly use as long as the use is fair. The blanket ban on all copying expressed or implied in the standard copyright notices contradicts the statutory fair use exception and has no support in the law. The doctrine of 'fair use' is essential for educators and scholars, and their representatives in professional organizations are vigilant in protecting it."

"Section 107 of the Copyright Act gives teachers the right to copy for educational use, 'including multiple copies for classroom use.' That is the starting place in considering fairness. There is no basis for a charge of unfairness if some or all of certain factors are present: if there is no profit-oriented commercial enterprise in the proposed use of a copy; if the work to be copied is not itself of profit-making nature; if no more than a portion of a written work is to be copied; and if the copying is 'not likely to reduce the copyright owner's potential market.' In doubtful cases, it may be advisable to seek permission, if it can be obtained in a reasonable time before use. The most important element is how the copy will be used; if the proposed use is fair, there is no infringement in the making of the copy."

"Guidelines for copying, on paper copying machines, by performances, and off-the-air, have been drafted and circulated among educational institutions, scholarly societies, libraries and other organizations. While those guidelines do not have universal approval and are expressly described as minimum limits, any copying within those limits will not be considered infringement by those who adopted the guidelines. Copying beyond the limits of the guidelines may still be fair, but it runs the risk of exposure to claims of infringement. In the interest of maintaining undiluted all the copying rights protected by the law, teachers and scholars who need copies are urged to accord a full measure of fairness to authors, publishers, composers and artists."

"The scope of the doctrine of fair use can be dangerously eroded if the limits imposed by agreement, law and good faith are often exceeded in practice, even if by only a few educators. Charges of excess copying have led to lawsuits, adverse judgments, and harmful judicial opinions. The efforts of the Educators' Ad Hoc Committee on Copyright Law to protect the legitimate scope of fair use are endangered by excesses."

"The Community of scholars, teachers, students and librarians is urged to continue to avoid copying that exceeds fair limits without the consent of an identified copyright owner. The limits, admittedly, are hard to define; they can only be applied in the context of a particular situation. This message seeks to provide reliable guidance, and also a warning, so that particular acts of copying, even for education or scholarship, do not become illegal infringement."

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Legislative Update

The Senate May 11 at 1:48 am dramatically approved by a vote of 50-49 a budget plan that would cut about \$56 billion from the more than \$200 billion federal deficit. The budget, which now goes to the House, limits military spending to an increase to cover inflation for fiscal '86 and freezes Social Security cost of living adjustments.

Funding for elementary and secondary education programs was approved at FY'85 levels turning back the President's proposal to cut elementary and secondary education programs by \$313 million, except for a \$73 million cut in Impact Aid. While a freeze is an improvement on the '86 spending plans recommended by the President and the Senate Budget Committee, it represents a cut because the programs would not be increased for inflation. In higher education programs, the Senate agreed to a compromise plan offered by Robert Stafford (R-VT) that would cut \$200 million from guaranteed student loan (GSL's) programs through administrative changes that the Senator said will have no effect on the amount of aid students receive. All other student aid programs would be frozen at this year's level.

In the Democratic-led House the Senate-passed budget faces a tough road. There are expected to be efforts to further restore many of the programs and possibly raise taxes.

The Senate also turned back the President's proposal to drastically cut Child Nutrition Programs. The Senate-passed budget would cut \$1.2 billion from the school lunch program over 3 fiscal years instead of the \$1.6 billion that the White House had proposed. The original Administration budget plan proposed an elimination of the \$.12 subsidy schools receive for middle- and upper-income students. The compromise cuts \$.07 from the cash subsidy for full-price meals, with no inflation adjustment for free and reduced-price meal reimbursements.

Recent Action...

Civil Rights Restoration Act, H.R.700 - The House Education and Labor Committee May 8 postponed indefinitely consideration of the measure that would effectively nullify the Supreme Court's 1984 decision in *Grove City College v. Bell*, which narrowed the scope of federal law barring sex discrimination in education and of statutes barring discrimination on the basis of race, age, and handicap. The House Judiciary Committee also postponed its markup of H.R. 700. Some observers say that delays are a result of attempts to build bipartisan compromises. Others predict that the bill is unlikely to be passed this year.

Child Nutrition Amendments, H.R.7 - The House Education and Labor Committee May 7 reported H.R. 7, a bill to reauthorize 5 child nutrition programs through 1988 at fiscal '85 funding levels and provide a \$.06 per meal increase for the school breakfast program.

The Committee approved an amendment offered by Rep. Dale Kildee (D-MI) to allow private schools charging tuition up to \$2500 to participate in the school lunch program. Under current law adopted in 1981, only schools charging tuition of \$1500 or less may participate. CAPE continues to work to have the tuition cap ended on principle.

Upcoming Action...

Humanities Nomination - Edward Curran, Peace Corps deputy director, was nominated by the President in April to head the National Endowment for the Humanities. This post has been vacant since William Bennett became Education Secretary. Curran, former headmaster of Washington's National Cathedral School from 1968-1980, had a brief tenure as NIE director which ended with his resignation in June, 1982 after clashing with Secretary Bell over a letter to President Reagan recommending that NIE be abolished. Hearings in the Senate Labor and Human Resources Committee are expected to be scheduled in early June.

"A little knowledge is a bad thing..."

CAPE recently submitted to Emerson Elliot, Acting Director of NIE and NCES, a list of private education topics for which data and/or research is needed by public policy makers and Congressional members and staffers. There is still a serious gap in the data base about private education. Although the latest NCES update on private schools included a wide-range of matters never before collected (the information is expected to be "out" this summer) people working on the Hill and in think tanks locally are anxious to get a much larger range of data and information. CAPE's member organizations and its own needs are very much involved.

The list was compiled at a recent meeting of local CAPE member organizations, Senate and House of Representative's staff members and representatives for the Office of Private Education in the Department of Education.

NCES has invited comments on its future research agenda from a wide variety of organizations as it begins a new period under the responsibility of a new Education Secretary.

Chapter I Celebrates 20th Birthday

To celebrate the most sweeping federal education legislation ever passed by Congress, national education representatives, school administrators, teachers and parents from across the country came to Washington April 24 for a day long symposium on the Elementary and Secondary Education Act of 1965. Twenty years later, this legislation continues to guide federal education programs for the disadvantaged, having become, in 1981, Chapter I of the Education Consolidation and Improvement Act.

Cosponsored by CAPE, 26 educational organizations and 5 Members of Congress, the symposium traced the developments of Title I and highlighted its evolution during the past 20 years. Jack Jennings, counsel to the House Elementary and Secondary Education Subcommittee, noted that one of the greatest obstacles to getting the original ESEA adopted was cleared when private and public school educators reached a compromise that remains intact today: funds should support services to students, not schools. Other major challenges to clearing the bill centered around the questions of how to ensure grantees do not discriminate by race and whether federal aid would lead to federal control of schools.

Once the bill was enacted, schools went to work, implementing it with no precedent to guide them. Despite encountering initial problems, Title I brought immediate benefits not the least of which was making the learning problems of the disadvantaged a priority. Participating panelists and politicians were nearly unanimous in their opinion that the Title I program and the other major Great Society Programs - federal aid to education, medicare, and civil rights - have been successful withstanding many challenges and should continue to be priorities of the federal government.

At banquet ceremonies on the evening of April 23, 250 educators and school officials heard Vice President George Bush and Education Secretary William Bennett praise the program for promoting equal educational access. "Even though every area of the budget is coming under close examination and tough decisions have to be made, there is broad consensus in terms of the funding for the Title I program," Bush told the educators.

But symposium attendees voiced concern with current and future program funding. Panelists noted that the \$3.7 billion funding for ESEA today provides the same level of service as the \$1 billion appropriated in 1966, despite the existence of 3.3 million more children living below the government poverty level. And they noted that the Administration's budget plan to roughly freeze Chapter I aid at \$3.7 billion for fiscal 1986 would eliminate 100,000 children from the program.

Site Visits Completed

Teams of educators completed 120 on site evaluations early in May of schools involved in the Exemplary Private School Recognition Project. Close to 90 of these one-day evaluations took place during April. Last fall nearly 300 schools applied to the Project, and of these, 120 schools were recommended for site visits.

Reports written by the evaluators will be used by various screening committees in the coming weeks and by the Project Steering Committee, which will meet late in May. Schools recommended for recognition by the Department of Education will be announced in late June.

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