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Barn

Ø1972Ø.316

97th CONGRESS  
2d Session

H.R. 1635

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IN THE SENATE OF THE UNITED STATES

October 7, 1981

Read twice and referred to the Committee on the Judiciary

September (legislative day, ) 1982

Reported by Mr. Dole, with an amendment to the text and an  
amendment to the title

[Strike out all after the enacting clause and insert the part  
printed in italic]

-----  
AN ACT

For the relief of the Jefferson County Mental Health Center,  
Incorporated, and of certain current and former employees  
thereof.

1 Be it enacted by the Senate and House of Representatives  
2 of the United States of America in Congress assembled, That  
3 the Secretary of the Treasury is authorized and directed to  
4 pay, out of any money in the Treasury not otherwise  
5 appropriated, to the Jefferson County Mental Health Center,  
6 Incorporated, the sum of \$56,000 in full settlement of all  
7 claims of the center against the United States for repayment  
8 of amounts the center erroneously refunded to its employees  
9 for social security contributions in the period after  
10 December 31, 1974, and prior to May 14, 1975, pursuant to  
11 instructions by the Internal Revenue Service.

12 Sec. 2. No part of the amount appropriated in the Act in  
13 excess of 48 per centum shall be paid, delivered to, or  
14 received by any agent or attorney on account of services  
15 rendered in connection with this claim, and the same shall be  
16 unlawful, any contract to the contrary notwithstanding. Any

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7     ~~claims of the center against the United States for repayment~~  
8     ~~of amounts the center erroneously refunded to its employees~~  
9     ~~for social security contributions in the period after~~  
10    ~~December 31, 1974, and prior to May 14, 1975, pursuant to~~  
11    ~~instructions by the Internal Revenue Service.~~  
12    Sec. 2. No part of the amount appropriated in the Act in  
13    ~~excess of 40 per centum shall be paid, delivered to, or~~  
14    ~~received by any agent or attorney on account of services~~  
15    ~~rendered in connection with this claim, and the same shall be~~  
16    ~~unlawful, any contract to the contrary notwithstanding. Any~~

1 person-violating-the-provisiens-of-this-section-shall-be  
2 deemed-guilty-of-a-misdemeanor-and, upon-conviction-thereef  
3 be-fined-any-sum-not-exceeding-\$1,000.

4 SECTION 1. SHORT TITLE.

5 This Act may be cited as the "Educational Opportunity  
6 and Equity Act of 1982".

7 SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.

8 (a) Findings.--The Congress finds that it is the policy  
9 of the United States to foster educational opportunity,  
10 diversity, and choice for all Americans. Therefore, this Act  
11 recognizes that--

12 (1) pluralism is one of the great strengths of  
13 American society, diversity in education is an important  
14 contributor to that pluralism, and nonpublic schools play  
15 an indispensable role in making that diversity possible;

16 (2) the existence and availability of alternatives to  
17 public education tend to strengthen public education  
18 through competition and to improve the educational  
19 opportunities of all Americans;

20 (3) Americans should have equal opportunities to  
21 choose between the education offered by public schools  
22 and available in private educational systems and should  
23 not be compelled because of economic circumstances to  
24 accept education provided by government-created and  
25 government-operated school systems, and to force such a  
26 selection is an unfair and unjust discrimination against  
27 persons of lesser means;

28 (4) Increasing numbers of American families are  
29 unable to afford nonpublic school tuition in addition to  
30 the State and local taxes that go to support public  
31 schools, and tax relief for nonpublic school tuition  
32 expenses is necessary if American families are to  
33 continue to have a meaningful choice between public and  
34 private education at the elementary and secondary levels;

(5) tax relief in the form of tuition tax credits is the fairest way to extend a choice in education to a wide range of individuals, tax relief in the form of tuition tax credits creates the least possible danger of interference in the lives of individuals and families consistent with achieving these ends, and tax relief in the form of tuition tax credits achieves these ends with a minimum of complexity so that those for whom the tax relief is intended will be able to understand and take advantage of it;

(6) the tax revenue loss occasioned by a tuition tax credit for a child would be small compared to the cost to State and local taxpayers of educating the child at a public school; and

(7) equality of educational opportunity is the policy of the United States, and the tax relief afforded by this legislation should not be used to promote racial discrimination.

The Congress finds that this Act will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

(b) Purpose.--The primary purpose of this Act is to enhance equality of educational opportunity, diversity, and choice for Americans.

#### SEC. 3. CREDIT FOR TUITION EXPENSES.

(a) In General.--Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting after section 44G the following new section:

#### SEC. 44H. CREDIT FOR TUITION EXPENSES.

(a) General Rule.--At the election of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the qualified tuition expenses paid by such

1 individual during the taxable year for any qualified  
2 dependent.

3     “(b) Limitations.--

4         “(1) Maximum dollar amount per qualified  
5 dependent.--

6             “(A) In general.--The amount of the credit  
7 allowable to the taxpayer under subsection (a) with  
8 respect to any qualified dependent for any taxable  
9 year shall not exceed the applicable amount.

10             “(B) Applicable amount.--For purposes of this  
11 paragraph, the term ‘applicable amount’ means the  
12 excess, if any, of--

13                 “(i) \$300, over

14                 “(ii) 3 percent (6 percent in the case of a  
15 married individual who does not file a joint  
16 return) of the amount, if any, by which the  
17 adjusted gross income of the taxpayer for the  
18 taxable year exceeds \$40,000 (\$20,000 in the case  
19 of such married individual).

20             “(C) Transitional rule.--For taxable years  
21 beginning after December 31, 1982, and before January  
22 1, 1985, subparagraph (B) shall be applied--

23                 “(i) in taxable years beginning in 1983, by  
24 substituting--

25                     “(I) ‘\$100’ for ‘\$300’,

26                     “(II) ‘1 percent’ for ‘3 percent’, and

27                     “(III) ‘2 percent’ for ‘6 percent’, and

28                 “(ii) in taxable years beginning in 1984, by  
29 substituting--

30                     “(I) ‘\$200’ for ‘\$300’,

31                     “(II) ‘2 percent’ for ‘3 percent’, and

32                     “(III) ‘4 percent’ for ‘6 percent’.

33             “(2) Credit not to exceed tax liability.--The credit  
34 allowed by subsection (a) shall not exceed the tax

1 imposed by this chapter for the taxable year, reduced by  
2 the sum of the credits allowable under a section of this  
3 subpart having a lower number or letter designation than  
4 this section, other than credits allowable by sections  
5 31, 39, and 43.

6 "(c) Credit Denied for Amounts Paid to Racially  
7 Discriminatory Institutions.--

8 "(1) Declaratory judgment entered.--

9 "(A) In general.--No credit shall be allowed  
10 under this section for any amount paid to an  
11 educational institution during any taxable year if  
12 within the calendar year ending with or within such  
13 taxable year or in any preceding calendar year--

14 "(1) either--

15 "(I) a judgment has been entered by a  
16 district court of the United States under  
17 section 7408 (regardless of whether such  
18 judgment is appealed) declaring that such  
19 educational institution follows a racially  
20 discriminatory policy, or

21 "(II) an order by any United States  
22 Court of Appeals has been made which by its  
23 terms requires the district court to enter  
24 such a judgment, and

25 "(ii) no order described in section 7408 (f)

26 (2) with respect to such educational institution  
27 ~~has been entered at any time subsequent to such~~  
28 ~~judgment.~~

29 "(B) Reversals of declaratory judgments.--

30 "(1) In general.--A judgment or order  
31 described in subparagraph (A) (i) entered in an  
32 action brought with respect to an educational  
33 institution shall not be taken into account under  
34 subparagraph (A) for any taxable year if, after

1 all appeals in such action have been concluded or  
2 the time for filing such appeals has expired, the  
3 declaration contained in such judgment, or  
4 required to be entered under the terms of such  
5 order, that such institution has followed a  
6 racially discriminatory policy is negated (other  
7 than by reason of an order described in section  
8 7408 (f) (2)).

9 "(ii) Waiver of limitations.--

10 Notwithstanding section 6511 (a) or any other  
11 period of limitation or lapse of time, a claim  
12 for credit or refund of overpayment of the tax  
13 imposed by this chapter which arises by reason of  
14 this subparagraph may be filed by any person at  
15 any time within the 1-year period beginning on  
16 the date on which any judgment or order described  
17 in clause (i) becomes final and no longer  
18 appealable. Sections 6511 (b) and 6514 shall not  
19 apply to any claim for credit or refund filed  
20 under this paragraph within such 1-year period.

21 "(C) Stay of declaratory judgment.--

22 "(i) In general.--Any judgment or order  
23 described in subparagraph (A) (i) shall not be  
24 taken into account under subparagraph (A) for any  
25 taxable year if such judgment or order is stayed  
26 as of the close of such taxable year.

27 "(ii) Removal of stay.--If a stay entered  
28 against a judgment or order described in  
29 subparagraph (A) (i) is vacated--

30 "(i) this subparagraph shall not apply  
31 with respect to such judgment or order for  
32 any taxable year preceding the taxable year  
33 in which such stay is vacated, and

34 "(ii) notwithstanding any other



1 provision of this title or of any other law,  
2 the statutory period for the assessment of a  
3 deficiency attributable to the disallowance  
4 of any credit under this section by reason of  
5 this clause shall not expire before the date  
6 which is 3 years after the close of the  
7 calendar year in which such stay is removed.

8 "(2) Required statements.--

9 "(A) Statements furnished by institutions to the  
10 Secretary.--No credit shall be allowed under  
11 subsection (a) for amounts paid to any educational  
12 institution during the taxable year if such  
13 educational institution has not filed with the  
14 Secretary (in such manner and form as the Secretary  
15 shall by regulation prescribe) within 30 days after  
16 the close of the calendar year ending with or within  
17 such taxable year a verified statement which--

18 "(1) declares that such institution has not  
19 followed a racially discriminatory policy during  
20 such calendar year;

21 "(11) indicates whether--

22 "(I) a declaratory judgment or order  
23 described in paragraph (1) (A) (1) has been  
24 entered against such institution in an action  
25 brought under section 7408;

26 "(II) a stay against such judgment or  
27 order is in effect; and

28 "(III) an order described in section  
29 7408 (f) (2) has been entered in such action;  
30 and

31 "(111) attests that such institution has  
32 complied with the requirements of subsection (d)  
33 (3) (D) during such calendar year.

34 "(B) Statements furnished to taxpayers.--Except

as otherwise provided by regulations, within 30 days after the close of the calendar year to which the statement described in subparagraph (A) relates, the educational institution shall furnish a copy of such statement to all persons who paid tuition expenses to the institution in the calendar year to which such statement relates.

“(C) Statements furnished by taxpayers to the Secretary.-- No credit shall be allowed to a taxpayer under subsection (a) for amounts paid to an educational institution during the taxable year if the taxpayer does not attach to the return on which the taxpayer claims the credit the statement described in subparagraph (A) which is furnished by such institution for the calendar year ending with or within such taxable year of the taxpayer.

“(3) Enforcement responsibility.--The Attorney General shall have exclusive authority under this subsection to investigate and to determine whether an educational institution is following a racially discriminatory policy.

“(4) Racially discriminatory policy.--For purposes of this subsection--

“(A) In general.--An educational institution follows a racially discriminatory policy if such institution refuses, on the basis of race, to--

“(i) admit applicants as students;

“(ii) admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

“(iii) allow students to participate in its scholarship, loan, athletic, or other programs.

“(B) Quotas, etc.--The term ‘racially

discriminatory policy' shall not include failure of any educational institution to pursue or achieve any racial quota, proportion, or representation in the student body.

“(C) Race.--The term ‘race’ shall include color or national origin.

“(d) Definitions.--For purposes of this section--

“(1) qualified tuition expenses.--The term ‘qualified tuition expenses’ means the excess of--

“(A) the amount of tuition expenses paid by the taxpayer during the taxable year to any eligible educational institution for any qualified dependent of such taxpayer, over

“(B) any scholarship or financial assistance paid during such taxable year to such qualified dependent or to the taxpayer with respect to such qualified dependent.

“(2) qualified dependent.--The term ‘qualified dependent’ means any individual--

“(A) who is a dependent of the taxpayer (other than an individual described in paragraph (4), (5), (7), or (8) of section 152 (a)),

“(B) who has not attained 20 years of age at the close of the taxable year, and

“(C) with respect to whom a deduction under section 151 is allowable to the taxpayer for the taxable year.

“(3) Eligible educational institution.--The term ‘eligible educational institution’ means an educational institution--

“(A) which provides a full-time program of elementary or secondary education;

“(B) which is a privately operated, not-for-profit, day or residential school;

1       “(C) which is exempt from taxation under section  
2       501(a) as an organization described in section  
3       501(c)(3), including church-operated schools to which  
4       subsections (a) and (b) of section 508 do not apply;

5       “(D) which includes in its by-laws,  
6       advertisements, admission application forms and other  
7       such publications, if any, a statement (in such form  
8       and manner as the Secretary may by regulations  
9       prescribe) that it does not discriminate against  
10      student applicants or students on the basis of race;

11      “(E) which does not have an admissions policy  
12      that discriminates against handicapped children; and

13      “(F) attendance at which satisfies the  
14      requirements of any law of the State in which--

15          “(i) such institution is located, or

16          “(ii) the qualified dependent of the  
17          taxpayer resides,

18      which requires children to attend school.

19      “(4) Admissions policy which discriminates against  
20      handicapped children.--

21      “(A) In general.--An educational institution has  
22      an admissions policy which discriminates against  
23      handicapped children if such institution refuses to  
24      admit otherwise qualified applicants solely on the  
25      basis of their handicap.

26      “(B) Inability to meet special needs.--An  
27      educational institution which denies admission to any  
28      handicapped child shall not be treated as having an  
29      admissions policy which discriminates against  
30      handicapped children if such admission is denied  
31      because such institution does not have the special  
32      facilities or programs or specially qualified  
33      personnel to accommodate such handicapped child.

34      “(C) Handicapped children.--The term

1 'handicapped children' has the same meaning given  
2 such term by section 602 (1) of the Education of the  
3 Handicapped Act.

4 '(5) Tuition expenses.--

5 '(A) In general.--The term 'tuition expenses'  
6 means tuition and fees paid for the full-time  
7 enrollment or attendance of a student at an  
8 educational institution, including required fees for  
9 courses.

10 '(B) Certain expenses excluded.--The term  
11 'tuition expenses' does not include any amount paid  
12 for--

13 '(i) books, supplies, and equipment for  
14 courses of instruction;

15 '(ii) meals, lodging, transportation, or  
16 personal living expenses;

17 '(iii) education below the first-grade  
18 level; or

19 '(iv) education above the twelfth-grade  
20 level.

21 '(6) Scholarship or financial assistance.--The term  
22 'scholarship or financial assistance' means--

23 '(A) a scholarship or fellowship grant (within  
24 the meaning of section 117(a)(1)) which is not  
25 includible in gross income under section 117;

26 '(B) an educational assistance allowance under  
27 chapter 32, 34, or 35 of title 38, United States  
28 Code; or

29 '(C) other financial assistance which--

30 '(i) is for educational expenses, or  
31 attributable to attendance at an educational  
32 institution, and

33 '(ii) is exempt from income taxation by any  
34 law of the United States (other than a gift,

bequest, devise, or inheritance within the meaning of section 1Ø2(a)).

“(e) Election.--The election provided under subsection (a) shall be made at such time and in such manner as the Secretary shall by regulations prescribe.”.

(b) Disclosure of Information to Attorney General.-- Subsection (h) of section 61Ø3 of such Code (relating to disclosure to certain Federal officers and employees for tax administration purposes) is amended by adding at the end thereof the following new paragraph:

“(6) Certain investigations and proceedings regarding racially discriminatory policies.--Upon the request of the Attorney General or the Secretary's own motion, the Secretary shall disclose any return or return information which is relevant to--

“(A) any investigation conducted by the Attorney General under section 44H (c) with regard to whether an educational institution is following a racially discriminatory policy (within the meaning of section 44H (c) (4)), or

“(B) any proceeding which may be brought under section 74Ø8,

to any officer or employee of the Department of Justice who is directly and personally involved in such investigation or in preparation for such a proceeding.”.

(c) Conforming Amendment.--

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 44G the following:

“Sec. 44H. Tuition expenses.”.

(2) Section 65Ø4 of such Code (relating to cross references with respect to periods of limitation) is amended by adding at the end thereof the following new

paragraph:

“(12) For disallowance of tuition tax credits because of a declaratory judgment that a school follows a racially discriminatory policy, see section 44H(c).”.

SEC. 4. DECLARATORY JUDGMENT PROCEEDING.

(a) In General.--Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

SEC. 7408. DECLARATORY JUDGMENT RELATING TO RACIALLY DISCRIMINATORY POLICIES OF SCHOOLS.

“(a) In General.--Upon filing of an appropriate pleading by the Attorney General under subsection (b), the district court of the United States for the district in which an educational institution is located may make a declaration with respect to whether such institution follows a racially discriminatory policy. Any such declaration shall have the force and effect of a final judgment of the district court and shall be reviewable as such.

“(b) Filing of Pleading.--

“(1) In general.--The Attorney General is authorized and directed to seek a declaratory judgment under subsection (a) against any educational institution upon--

“(A) receipt by the Attorney General within the previous 1-year period of any allegation of discrimination against such institution, and

“(B) a finding by the Attorney General of good cause.

“(2) Allegation of discrimination.--For purposes of this section, the term ‘allegation of discrimination’ means an allegation made in writing by any person which alleges with specificity that--

“(A) a named educational institution has committed a racially discriminatory act against a



named student applicant or student within one year preceding the date on which such allegation is made to the Attorney General, or

“(B) the educational institution made a statement, within one year preceding such date, communicating an intent to follow a racially discriminatory policy.

“(3) Notice of allegations of discrimination.--Upon receipt of any allegation of discrimination made against an educational institution, the Attorney General shall promptly give written notice of such allegation to such institution.

“(4) Opportunity to comment.--Before any action may be filed against an educational institution by the Attorney General under subsection (a), the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the alleged racially discriminatory policy does not exist or has been abandoned.

“(5) Availability of certain information to complainant.--

“(A) In general.--If an allegation of discrimination against an educational institution is made to the Attorney General and the Attorney General--

“(i) declines to bring an action under subsection (a) against such institution, or

“(ii) enters into a settlement agreement with such institution under subsection (d) before such an action is brought,

the Attorney General shall make available to the person who made such allegation the information upon which the Attorney General based the decision not to bring such an action or to enter into such settlement



1 agreement. The Attorney General shall promptly give  
2 written notice to such person that such information  
3 is available for his inspection.

4 "(B) Privacy laws.--Nothing in this paragraph  
5 shall be construed to authorize the Attorney General  
6 to disclose any information if such disclosure would  
7 violate any <sup>applicable State or Federal</sup> law relating to privacy. (Other § 6103)

8 "(c) Requirements for a Finding of Following a Racially  
9 Discriminatory Policy.--A district court may declare that an  
10 educational institution follows a racially discriminatory  
11 policy in an action brought under subsection (a) only if the  
12 Attorney General establishes in such action that--

13 "(1) the institution has, pursuant to such policy,  
14 taken an action discriminating against a student  
15 applicant or student within the two years preceding  
16 commencement of such action;

17 "(2) the institution has, within the two years  
18 preceding commencement of such action, made a statement  
19 communicating an intent to follow a racially  
20 discriminatory policy against student applicants or  
21 students; or

22 "(3) the institution has engaged in a pattern of  
23 conduct intended to implement a racially discriminatory  
24 policy, and that some act in furtherance of this pattern  
25 of conduct was committed within two years preceding  
26 commencement of such action.

27 "(d) Settlements.--

28 "(1) In general.--Prior to, and in lieu of, filing  
29 an action under subsection (a), the Attorney General may,  
30 at his discretion, enter into a settlement agreement with  
31 the educational institution against which an allegation  
32 of discrimination has been made if the Attorney General  
33 finds that the institution has been acting in good faith  
34 and has abandoned its racially discriminatory policy.

1       “(2) Violation of settlement agreement.--If the  
2       Attorney General has entered into a settlement agreement  
3       with an educational institution under paragraph (1) and  
4       the Attorney General finds that such institution is in  
5       violation of such agreement, the Attorney General may--

6               “(A) notwithstanding subsection (b) (1) (A),  
7       bring an action under subsection (a) without having  
8       received any allegation of discrimination against  
9       such institution, or

10              “(B) bring an action to enforce the terms of  
11       such agreement.

12       “(3) Copy of settlement agreement to complainant.--  
13       The Attorney General shall give a copy of any settlement  
14       agreement which is entered into with any educational  
15       institution under paragraph (1) to any person from whom  
16       the Attorney General has received an allegation of  
17       discrimination against such institution.

18       “(e) Retention of Jurisdiction.--Any district court  
19       which makes a declaration under subsection (a) that an  
20       educational institution follows a racially discriminatory  
21       policy shall retain jurisdiction of such case.

22       “(f) Discontinuance of Racially Discriminatory Policy.--

23              “(1) Motion.--

24               “(A) In general.--At any time after the date  
25       which is 1 year after the date on which a judgment is  
26       entered in an action brought under subsection (a)  
27       declaring that an educational institution follows a  
28       racially discriminatory policy, such institution may  
29       file with the district court a motion to modify such  
30       judgment to include a declaration that such  
31       institution no longer follows a racially  
32       discriminatory policy.

33               “(B) Affidavits.--Any motion filed under  
34       subparagraph (A) shall contain affidavits--

1           “(1) describing with specificity the ways in  
2           which the educational institution has ~~changed~~ <sup>abandoned</sup> its  
3           previous racially discriminatory policy;

4           “(ii) describing with specificity the ways  
5           in which such institution has taken reasonable  
6           steps to communicate its policy of  
7           nondiscrimination to students, to faculty, to  
8           school administrators, and to the public in the  
9           area it serves;

10          “(iii) averring that such institution has  
11          not discriminated against an applicant or student  
12          pursuant to a racially discriminatory policy  
13          during the preceding year; and

14          “(iv) averring that such institution has  
15          complied with the requirements of section 44H (d)  
16          (3) (D).

17          “(2) Order.--If a motion is made under paragraph  
18          (1), the district court shall issue an order modifying  
19          the judgment entered in the action to include a  
20          declaration that the educational institution no longer  
21          follows a discriminatory policy unless the Attorney  
22          General establishes that--

23               “(A) the institution has not in fact stopped  
24               following its previous discriminatory policy;

25               “(B) the institution has committed a racially  
26               discriminatory act against an applicant or student  
27               within the preceding year;

28               “(C) the institution has made statements within  
29               the preceding year communicating an intent to follow  
30               a racially discriminatory policy; or

31               “(D) the institution has not, in fact, complied  
32               with the requirements of clauses (ii) and (iv) of  
33               paragraph (1) (B).

34          “(3) Appeal of orders.--Any order of the district

1 court granting or denying a motion made under paragraph  
2 (1) shall be reviewable.

3 ``(g) Attorneys' Fees.--If an educational institution  
4 prevails in an action under this section, the court may award  
5 the institution costs and reasonable attorneys' fees in such  
6 action.

7 ``(h) Definitions.--For purposes of this section--

8 ``(1) Racially discriminatory policy.--The term  
9 'racially discriminatory policy' has the meaning given to  
10 such term by section 44H (c) (4).

11 ``(2) Racially discriminatory act.--

12 ``(A) In general.--An educational institution  
13 commits a racially discriminatory act if such  
14 institution refuses, on the basis of race, to--

15 ``(i) admit any applicant as a student;

16 ``(ii) admit any student to the rights,  
17 privileges, programs, and activities generally  
18 made available to students by the educational  
19 institution; or

20 ``(iii) allow any student to participate in  
21 its scholarship, loan, athletic, or other  
22 programs.

23 ``(B) Quotas, etc.--The term 'racially  
24 discriminatory act' shall not include the failure of  
25 such institution to pursue or achieve any racial  
26 quota, proportion, or representation in the student  
27 body.

28 ``(C) Race.--The term 'race' shall include color  
29 or national origin.

30 ``(i) Report.--Within 90 days of the close of each  
31 calendar year, the Attorney General shall submit a report to  
32 the Congress concerning the disposition during such calendar  
33 year of--

34 ``(1) any allegations of discrimination received by

the Attorney General, and

“(2) any actions brought under this section.”.

(b) Conforming Amendment.--The table of sections for subchapter A of chapter 76 of such Code (relating to civil actions by the United States) is amended by striking out the item relating to section 7408 and inserting in lieu thereof:

“Sec. 7408. Declaratory judgment relating to racially discriminatory policies of schools.

“Sec. 7409. Cross references.”.

SEC. 5. TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE.

Tax credits claimed under section 44B of the Internal Revenue Code of 1954 shall not constitute Federal financial assistance to educational institutions or to the recipients of such credits.

SEC. 6. EFFECTIVE DATE; SPECIAL RULE.

(a) Certification Required.--The amendments made by this Act shall not take effect until the Attorney General certifies to the Secretary of the Treasury that, pursuant to--

(1) an Act <sup>of Congress</sup> ~~or joint resolution which has been~~ enacted, or

(2) a final decision of the United States Supreme Court,

the Internal Revenue Code of 1954 prohibits the granting of tax exemption under section 501 (a) by reason of section 501 (c) (3) to private educational institutions maintaining a racially discriminatory policy or practice as to students.

(b) Application When Certification is Made.--

(1) In general.--If the certification described in subsection (a) is made to the Secretary of the Treasury--

(A) except as provided in paragraph (2), the amendments made by section 3 shall apply with respect to expenditures made after the date on which such certification is made to the Secretary of the Treasury in taxable years beginning after December

31, 1982, and ending after such date, and

(B) the amendments made by section 4 shall take effect on the date on which such certification is made to the Secretary of the Treasury.

(2) No application before July 31, 1982.--In no event shall the amendments made by section 3 apply with respect to expenditures made before August 1, 1982.

(c) Estimated Income Tax and Wage Withholding.--

(1) Estimated income tax.--Any credit allowable to any taxpayer under section 44H of the Internal Revenue Code of 1954 shall not be taken into account under section 6015 (d) in determining the estimated tax of such taxpayer for any taxable year beginning before January 1, 1984.

(2) Wage withholding.--Any credit allowable under section 44H of such Code shall not be taken into account in determining the number of withholding exemptions to which any taxpayer is entitled under section 3402 of such Code with respect to remuneration paid before January 1, 1984.

Amend the title to read as follows: To amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

Passed the House of Representatives October 6, 1981.

Attest:

EDMUND L. HENSHAW, JR.,

Clerk.

1 if--

2 (1) an order (other than an order described in  
3 section 7408 (f) (2)) is entered in such action which  
4 reverses, vacates, remands, or modifies such original  
5 judgment,

6 (2) any modification of the original judgment made by  
7 reason of the order described in paragraph (1) negates  
8 the declaration that such school follows a discriminatory  
9 policy,

10 (3) any judgment subsequently entered in such action  
11 by reason of an order described in paragraph (1) negates  
12 such declaration, and

13 (4) the order described in paragraph (1) and any  
14 judgment described in paragraph (2) or (3) is final and  
15 no longer appealable.

As filed 9/2397th CONGRESS  
2d Session

H.R. 1635

Calendar No. --

[Report No. 97- ]

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IN THE SENATE OF THE UNITED STATES

October 7, 1981

Read twice and referred to the Committee on Finance

September (legislative day, ), 1982

Reported by Mr. Dole, with an amendment to the text and an  
amendment to the title[Strike out all after the enacting clause and insert the part  
printed in italic]-----  
AN ACT

For the relief of the Jefferson County Mental Health Center,  
Incorporated, and of certain current and former employees  
thereof.

1 Be it enacted by the Senate and House of Representatives  
2 of the United States of America in Congress assembled, That  
3 the Secretary of the Treasury is authorized and directed to  
4 pay out of any money in the Treasury not otherwise  
5 appropriated to the Jefferson County Mental Health Center,  
6 Incorporated, the sum of \$50,000 in full settlement of all  
7 claims of the center against the United States for repayment  
8 of amounts the center erroneously refunded to its employees  
9 for social security contributions in the period after  
10 December 31, 1974, and prior to May 14, 1975, pursuant to  
11 instructions by the Internal Revenue Service.  
12 Sec. 2. No part of the amount appropriated in the Act in  
13 excess of 40 per centum shall be paid, delivered to, or  
14 received by any agent or attorney on account of services



1 rendered-in-connection-with-this-claim,-and-the-same-shall-be  
2 unlawful,-any-contract-to-the-contrary-notwithstanding,-Any  
3 person-violating-the-provisions-of-this-section-shall-be  
4 deemed-guilty-of-a-misdemeanor-and,-upon-conviction-thereof  
5 be-fined-any-sum-not-exceeding-\$4,000-

6 SECTION 1. SHORT TITLE.

7 This Act may be cited as the ``Educational Opportunity  
8 and Equity Act of 1982``.

**ITALIC**

9 SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.

10 (a) Findings.--The Congress finds that it is the policy  
11 of the United States to foster educational opportunity,  
12 diversity, and choice for all Americans. Therefore, this Act  
13 recognizes that--

14 (1) pluralism is one of the great strengths of  
15 American society, diversity in education is an important  
16 contributor to that pluralism, and nonpublic schools play  
17 an indispensable role in making that diversity possible;

18 (2) the existence and availability of alternatives to  
19 public education tend to strengthen public education  
20 through competition and to improve the educational  
21 opportunities of all Americans;

22 (3) Americans should have equal opportunities to  
23 choose between the education offered by public schools  
24 and available in private educational systems and should  
25 not be compelled because of economic circumstances to  
26 accept education provided by government-created and  
27 government-operated school systems, and to force such a  
28 selection is an unfair and unjust discrimination against  
29 persons of lesser means;

30 (4) increasing numbers of American families are  
31 unable to afford nonpublic school tuition in addition to  
32 the State and local taxes that go to support public  
33 schools, and tax relief for nonpublic school tuition  
34 expenses is necessary if American families are to

**ITALIC**

1 continue to have a meaningful choice between public and  
2 private education at the elementary and secondary levels;

3 (5) tax relief in the form of tuition tax credits is  
4 the fairest way to extend a choice in education to a wide  
5 range of individuals, tax relief in the form of tuition  
6 tax credits creates the least possible danger of  
7 interference in the lives of individuals and families  
8 consistent with achieving these ends, and tax relief in  
9 the form of tuition tax credits achieves these ends with  
10 a minimum of complexity so that those for whom the tax  
11 relief is intended will be able to understand and take  
12 advantage of it;

13 (6) the tax revenue loss occasioned by a tuition tax  
14 credit for a child would be small compared to the cost to  
15 State and local taxpayers of educating the child at a  
16 public school; and

17 (7) equality of educational opportunity is the policy  
18 of the United States, and the tax relief afforded by this  
19 legislation should not be used to promote racial  
20 discrimination.

21 The Congress finds that this Act will expand opportunities  
22 for personal liberty, diversity, and pluralism that  
23 constitute important strengths of education in America.

24 (b) Purpose.--The primary purpose of this Act is to  
25 enhance equality of educational opportunity, diversity, and  
26 choice for Americans.

27 SEC. 3. CREDIT FOR TUITION EXPENSES.

28 (a) In General.--Subpart A of part IV of subchapter A of  
29 chapter 1 of the Internal Revenue Code of 1954 (relating to  
30 credits allowable) is amended by inserting after section 44G  
31 the following new section:

32 ``SEC. 44H. CREDIT FOR TUITION EXPENSES.

33 ``(a) General Rule.--At the election of an individual,  
34 there shall be allowed as a credit against the tax imposed by

1 this chapter for the taxable year an amount equal to 50  
2 percent of the qualified tuition expenses paid by such  
3 individual during the taxable year for any qualified  
4 dependent.

5 "(b) Limitations.--

6 "(1) Maximum dollar amount per qualified  
7 dependent.--

8 "(A) In general.--The amount of the credit  
9 allowable to the taxpayer under subsection (a) with  
10 respect to any qualified dependent for any taxable  
11 year shall not exceed the applicable amount.

12 "(B) Applicable amount.--For purposes of this  
13 paragraph, the term 'applicable amount' means the  
14 excess, if any, of--

15 "(1) \$300, over

16 "(11) 3 percent (6 percent in the case of a  
17 married individual who does not file a joint  
18 return) of the amount, if any, by which the  
19 adjusted gross income of the taxpayer for the  
20 taxable year exceeds \$40,000 (\$20,000 in the case  
21 of such married individual).

22 "(C) Transitional rule.--For taxable years  
23 beginning after December 31, 1982, and before January  
24 1, 1985, subparagraph (B) shall be applied--

25 "(1) in taxable years beginning in 1983, by  
26 substituting--

27 "(I) '\$100' for '\$300',

28 "(II) '1 percent' for '3 percent', and

29 "(III) '2 percent' for '6 percent', and

30 "(11) in taxable years beginning in 1984, by  
31 substituting--

32 "(I) '\$200' for '\$300',

33 "(II) '2 percent' for '3 percent', and

34 "(III) '4 percent' for '6 percent'.

1       “(2) Credit not to exceed tax liability.--The credit  
2       allowed by subsection (a) shall not exceed the tax  
3       imposed by this chapter for the taxable year, reduced by  
4       the sum of the credits allowable under a section of this  
5       subpart having a lower number or letter designation than  
6       this section, other than credits allowable by sections  
7       31, 39, and 43.

8       “(c) Credit Denied for Amounts Paid to Racially  
9       Discriminatory Institutions.--

10       “(1) Declaratory judgment entered.--

11       “(A) In general.--No credit shall be allowed  
12       under this section for any amount paid to an  
13       educational institution during any taxable year if--

14       “(1) within the calendar year ending with or  
15       within such taxable year or in any preceding  
16       calendar year--

17       “(I) a judgment has been entered by a  
18       district court of the United States under  
19       section 7408 (regardless of whether such  
20       judgment is appealed) declaring that such  
21       educational institution follows a racially  
22       discriminatory policy, or

23       “(II) an order by any United States  
24       Court of Appeals has been made which, by its  
25       terms, requires the district court to enter  
26       such a judgment, and

27       “(ii) no order described in section 7408 (f)  
28       (2) with respect to such educational institution  
29       has been entered which is in effect for the  
30       calendar year ending with or within such taxable  
31       year.

32       “(B) Reversals of declaratory judgments or  
33       orders.--

34       “(1) In general.--A judgment or order

1 described in subparagraph (A) (1) entered in an  
2 action brought with respect to an educational  
3 institution shall not be taken into account under  
4 subparagraph (A) for any taxable year if, after  
5 all appeals in such action have been concluded or  
6 the time for filing such appeals has expired, the  
7 declaration contained in such judgment, or  
8 required to be entered under the terms of such  
9 order, that such institution has followed a  
10 racially discriminatory policy is negated (other  
11 than by reason of an order described in section  
12 7408 (f) (2)).

13 "(11) Waiver of limitations.--

14 Notwithstanding section 6511 (a) or any other  
15 period of limitation or lapse of time, a claim  
16 for credit or refund of overpayment of the tax  
17 imposed by this chapter which arises by reason of  
18 this subparagraph may be filed by any person at  
19 any time within the 1-year period beginning on  
20 the earlier of--

21 "(I) the date on which all appeals with  
22 respect to the judgment or order described in  
23 subparagraph (A) (1) have been concluded, or

24 "(II) the date on which the time for  
25 such appeals has expired.

26 Sections 6511 (b) and 6514 shall not apply to any  
27 claim for credit or refund filed under this  
28 subparagraph within such 1-year period.

29 "(C) Stay of declaratory judgment.--

30 "(1) In general.--Any judgment or order  
31 described in subparagraph (A) (1) shall not be  
32 taken into account under subparagraph (A) for any  
33 taxable year if such judgment or order is stayed  
34 as of the close of such taxable year.

1           “(ii) Removal of stay.--If a stay entered  
2           against a judgment or order described in  
3           subparagraph (A) (1) is vacated--

4           “(I) this subparagraph shall not apply  
5           with respect to such judgment or order for  
6           any taxable year preceding the taxable year  
7           in which such stay is vacated, and

8           “(II) notwithstanding any other  
9           provision of this title or of any other law,  
10          the statutory period for the assessment of a  
11          deficiency attributable to the disallowance  
12          of any credit under this section by reason of  
13          this clause shall not expire before the date  
14          which is 3 years after the close of the  
15          calendar year in which such stay is removed.

16          “(D) Waiver of limitations if institution ceases  
17          to discriminate.--Notwithstanding section 6511 (a) or  
18          any other period of limitation or lapse of time, a  
19          claim for credit or refund of overpayment of the tax  
20          imposed by this chapter which arises by reason of a  
21          reversal of any order denying a motion under section  
22          7408 (f) (1) (A) may be filed by any person at any  
23          time within the 1-year period beginning on the date  
24          on which such reversal is made. Sections 6511 (B) and  
25          6514 shall not apply to any claim for credit or  
26          refund filed under this subparagraph within such 1-  
27          year period.

28          “(2) Required statements.--

29          “(A) Statements furnished by institutions to the  
30          Secretary.--No credit shall be allowed under  
31          subsection (a) for amounts paid to any educational  
32          institution during the taxable year if such  
33          educational institution has not filed with the  
34          Secretary (in such manner and form as the Secretary

1 shall by regulation prescribe) within 30 days after  
2 the close of the calendar year ending with or within  
3 such taxable year a verified statement which--

4 "(1) declares that such institution has not  
5 followed a racially discriminatory policy during  
6 such calendar year;

7 "(11) indicates whether--

8 "(I) a declaratory judgment or order  
9 described in paragraph (1) (A) (1) has been  
10 entered against such institution in an action  
11 brought under section 7408;

12 "(II) a stay against such judgment or  
13 order is in effect; and

14 "(III) an order described in section  
15 7408 (f) (2) is in effect; and

16 "(111) attests that such institution has  
17 complied with the requirements of subsection (d)  
18 (3) (D) during such calendar year.

19 "(B) Statements furnished to taxpayers.--Except  
20 as otherwise provided by regulations, within 30 days  
21 after the close of the calendar year to which the  
22 statement described in subparagraph (A) relates, the  
23 educational institution shall furnish a copy of such  
24 statement to all persons who paid tuition expenses to  
25 the institution in the calendar year to which such  
26 statement relates.

27 "(C) Statements furnished by taxpayers to the  
28 Secretary.-- No credit shall be allowed to a taxpayer  
29 under subsection (a) for amounts paid to an  
30 educational institution during the taxable year if  
31 the taxpayer does not attach to the return on which  
32 the taxpayer claims the credit the statement  
33 described in subparagraph (A) which is furnished by  
34 such institution for the calendar year ending with or

1 within such taxable year of the taxpayer.

2 ``(3) Enforcement responsibility.--The Attorney  
3 General shall have exclusive authority under this  
4 subsection to investigate and to determine whether an  
5 educational institution is following a racially  
6 discriminatory policy.

7 ``(4) Racially discriminatory policy.--For purposes  
8 of this subsection--

9 ``(A) In general.--An educational institution  
10 follows a racially discriminatory policy if such  
11 institution refuses, on the basis of race, to--

12 ``(i) admit applicants as students;

13 ``(ii) admit students to the rights,

14 privileges, programs, and activities generally  
15 made available to students by the educational  
16 institution; or

17 ``(iii) allow students to participate in its  
18 scholarship, loan, athletic, or other programs.

19 ``(B) Quotas, etc.--The term 'racially  
20 discriminatory policy' shall not include failure of  
21 any educational institution to pursue or achieve any  
22 racial quota, proportion, or representation in the  
23 student body.

24 ``(C) Race.--The term 'race' shall include color  
25 or national origin.

26 ``(d) Definitions.--For purposes of this section--

27 ``(1) Qualified tuition expenses.--The term  
28 'qualified tuition expenses' means the excess of--

29 ``(A) the amount of tuition expenses paid by the  
30 taxpayer during the taxable year to any eligible  
31 educational institution for any qualified dependent  
32 of such taxpayer, over

33 ``(B) any scholarship or financial assistance  
34 paid during such taxable year to such qualified



1 dependent or to the taxpayer with respect to such  
2 qualified dependent.

3 "(2) Qualified dependent.--The term 'qualified  
4 dependent' means any individual--

5 "(A) who is a dependent of the taxpayer (other  
6 than an individual described in paragraph (4), (5),  
7 (7), or (8) of section 152 (a)),

8 "(B) who has not attained 20 years of age at the  
9 close of the taxable year, and

10 "(C) with respect to whom a deduction under  
11 section 151 is allowable to the taxpayer for the  
12 taxable year.

13 "(3) Eligible educational institution.--The term  
14 'eligible educational institution' means an educational  
15 institution--

16 "(A) which provides a full-time program of  
17 elementary or secondary education;

18 "(B) which is a privately operated, not-for-  
19 profit, day or residential school;

20 "(C) which is exempt from taxation under section  
21 501(a) as an organization described in section  
22 501(c)(3), including church-operated schools to which  
23 subsections (a) and (b) of section 508 do not apply;

24 "(D) which includes in any published by-laws,  
25 advertisements, admission application forms and other  
26 such published materials, a statement (in such form  
27 and manner as the Secretary may by regulations  
28 prescribe) that it does not discriminate against  
29 student applicants or students on the basis of race;

30 "(E) which does not have an admissions policy  
31 that discriminates against handicapped children; and

32 "(F) attendance at which satisfies the  
33 requirements of any law of the State in which--

34 "(1) such institution is located, or

1           “(11) the qualified dependent of the  
2           taxpayer resides,  
3           which requires children to attend school.

4           “(4) Admissions policy which discriminates against  
5           handicapped children.--

6           “(A) In general.--An educational institution has  
7           an admissions policy which discriminates against  
8           handicapped children if such institution refuses to  
9           admit otherwise qualified applicants solely on the  
10          basis of their handicap.

11          “(B) Inability to meet special needs.--An  
12          educational institution which denies admission to any  
13          handicapped child shall not be treated as having an  
14          admissions policy which discriminates against  
15          handicapped children if such admission is denied  
16          because such institution does not have the special  
17          facilities or programs or specially qualified  
18          personnel to accommodate such handicapped child.

19          “(C) Handicapped children.--The term  
20          ‘handicapped children’ has the same meaning given  
21          such term by section 602 (1) of the Education of the  
22          Handicapped Act (20 U.S.C. 1401).

23          “(5) Tuition expenses.--

24          “(A) In general.--The term ‘tuition expenses’  
25          means tuition and fees paid for the full-time  
26          enrollment or attendance of a student at an  
27          educational institution, including required fees for  
28          courses.

29          “(B) Certain expenses excluded.--The term  
30          ‘tuition expenses’ does not include any amount paid  
31          for--

32                 “(i) books, supplies, and equipment for  
33                 courses of instruction;

34                 “(ii) meals, lodging, transportation, or

1 personal living expenses;

2 ``(iii) education below the first-grade  
3 level; or

4 ``(iv) education above the twelfth-grade  
5 level.

6 ``(6) Scholarship or financial assistance.--The term  
7 'scholarship or financial assistance' means--

8 ``(A) a scholarship or fellowship grant (within  
9 the meaning of section 117(a)(1)) which is not  
10 includible in gross income under section 117;

11 ``(B) an educational assistance allowance under  
12 chapter 32, 34, or 35 of title 38, United States  
13 Code; or

14 ``(C) other financial assistance which--

15 ``(1) is for educational expenses, or  
16 attributable to attendance at an educational  
17 institution, and

18 ``(ii) is exempt from income taxation by any  
19 law of the United States (other than a gift,  
20 bequest, devise, or inheritance within the  
21 meaning of section 1Ø2(a)).

22 ``(e) Election.--The election provided under subsection  
23 (a) shall be made at such time and in such manner as the  
24 Secretary shall by regulations prescribe.''.  
25

26 (b) Disclosure of Information to Attorney General.--  
27 Subsection (h) of section 61Ø3 of such Code (relating to  
28 disclosure to certain Federal officers and employees for tax  
29 administration purposes) is amended by adding at the end  
30 thereof the following new paragraph:

31 ``(6) Certain investigations and proceedings  
32 regarding racially discriminatory policies.--Upon the  
33 request of the Attorney General or the Secretary's own  
34 motion, the Secretary shall disclose any return or return  
information which is relevant to--

1           “(A) any investigation conducted by the Attorney  
2           General under section 44H (c) with regard to whether  
3           an educational institution is following a racially  
4           discriminatory policy (within the meaning of section  
5           44H (c) (4)), or

6           “(B) any proceeding which may be brought under  
7           section 7408,

8           to any officer or employee of the Department of Justice  
9           who is directly and personally involved in such  
10          investigation or in preparation for such a proceeding.”.

11         (c) Conforming Amendment.--

12           (1) The table of sections for subpart A of part IV of  
13          subchapter A of chapter 1 of such Code is amended by  
14          inserting after the item relating to section 44G the  
15          following:

          “Sec. 44H. Tuition expenses.”.

16           (2) Section 6504 of such Code (relating to cross  
17          references with respect to periods of limitation) is  
18          amended by adding at the end thereof the following new  
19          paragraph:

          “(12) For disallowance of tuition tax credits  
          because of a declaratory judgment that a school  
          follows a racially discriminatory policy, see section  
          44H(c).”.

20         SEC. 4. DECLARATORY JUDGMENT PROCEEDING.

21           (a) In General.--Subchapter A of chapter 76 of the  
22          Internal Revenue Code of 1954 (relating to judicial  
23          proceedings) is amended by redesignating section 7408 as  
24          section 7409 and by inserting after section 7407 the  
25          following new section:

26         “SEC. 7408. DECLARATORY JUDGMENT RELATING TO RACIALLY  
27                 DISCRIMINATORY POLICIES OF SCHOOLS.

28           “(a) In General.--Upon filing of an appropriate pleading  
29          by the Attorney General under subsection (b), the district  
30          court of the United States for the district in which an  
31          educational institution is located may make a declaration

1 with respect to whether such institution follows a racially  
2 discriminatory policy. Any such declaration shall have the  
3 force and effect of a final judgment of the district court  
4 and shall be reviewable as such.

5     “(b) Filing of Pleading.--

6         “(1) In general.--The Attorney General is authorized  
7 and directed to seek a declaratory judgment under  
8 subsection (a) against any educational institution upon--

9             “(A) receipt by the Attorney General within the  
10 previous 1-year period of any allegation of  
11 discrimination against such institution, and

12             “(B) a finding by the Attorney General of good  
13 cause.

14         “(2) Allegation of discrimination.--For purposes of  
15 this section, the term ‘allegation of discrimination’  
16 means an allegation made in writing by any person which  
17 alleges with specificity that--

18             “(A) a named educational institution has  
19 committed a racially discriminatory act against a  
20 named student applicant or student within one year  
21 preceding the date on which such allegation is made  
22 to the Attorney General, or

23             “(B) the educational institution made a  
24 communication, within one year preceding such date,  
25 expressing that the institution follows a racially  
26 discriminatory policy.

27         “(3) Notice of allegations of discrimination.--Upon  
28 receipt of any allegation of discrimination made against  
29 an educational institution, the Attorney General shall  
30 promptly give written notice of such allegation to such  
31 institution.

32         “(4) Opportunity to comment.--Before any action may  
33 be filed against an educational institution by the  
34 Attorney General under subsection (a), the Attorney

1 General shall give the institution a fair opportunity to  
2 comment on all allegations made against it and to show  
3 that the alleged racially discriminatory policy does not  
4 exist or has been abandoned.

5 "(5) Availability of certain information to  
6 complainant.--

7 "(A) In general.--If an allegation of  
8 discrimination against an educational institution is  
9 made to the Attorney General and the Attorney  
10 General--

11 "(1) declines to bring an action under  
12 subsection (a) against such institution, or

13 "(11) enters into a settlement agreement  
14 with such institution under subsection (d) before  
15 such an action is brought,

16 the Attorney General shall make available to the  
17 person who made such allegation the information upon  
18 which the Attorney General based the decision not to  
19 bring such an action or to enter into such settlement  
20 agreement. The Attorney General shall promptly give  
21 written notice to such person that such information  
22 is available for his inspection.

23 "(B) Privacy laws.--Nothing in this paragraph  
24 shall be construed to authorize or require the  
25 Attorney General to disclose any information if such  
26 disclosure would violate any applicable State or  
27 Federal law relating to privacy.

28 "(c) Requirements for a Finding of Following a Racially  
29 Discriminatory Policy.--A district court may declare that an  
30 educational institution follows a racially discriminatory  
31 policy in an action brought under subsection (a) only if the  
32 Attorney General establishes in such action that--

33 "(1) the institution has, pursuant to such policy,  
34 committed a racially discriminatory act against a student



1 applicant or student within the two years preceding  
2 commencement of such action;

3 "(2) the institution has, within the two years  
4 preceding commencement of such action, made a  
5 communication expressing that it follows a racially  
6 discriminatory policy against student applicants or  
7 students; or

8 "(3) the institution has engaged in a pattern of  
9 conduct intended to implement a racially discriminatory  
10 policy, and that some act in furtherance of this pattern  
11 of conduct was committed within two years preceding  
12 commencement of such action.

13 "(d) Settlements.--

14 "(1) In general.--Prior to, and in lieu of, filing  
15 an action under subsection (a), the Attorney General may,  
16 at his discretion, enter into a settlement agreement with  
17 the educational institution against which an allegation  
18 of discrimination has been made if the Attorney General  
19 finds that the institution has been acting in good faith  
20 and has abandoned its racially discriminatory policy.

21 "(2) Violation of settlement agreement.--If the  
22 Attorney General has entered into a settlement agreement  
23 with an educational institution under paragraph (1) and  
24 the Attorney General finds that such institution is in  
25 violation of such agreement, the Attorney General may--

26 "(A) notwithstanding subsection (b) (1) (A),  
27 bring an action under subsection (a) without having  
28 received any allegation of discrimination against  
29 such institution, or

30 "(B) bring an action to enforce the terms of  
31 such agreement.

32 "(3) Copy of settlement agreement to complainant.--  
33 The Attorney General shall give a copy of any settlement  
34 agreement which is entered into with any educational

1 institution under paragraph (1) to any person from whom  
2 the Attorney General has received an allegation of  
3 discrimination against such institution.

4 "(e) Retention of Jurisdiction.--Any district court  
5 which makes a declaration under subsection (a) that an  
6 educational institution follows a racially discriminatory  
7 policy shall retain jurisdiction of such case.

8 "(f) Discontinuance of Racially Discriminatory Policy.--

9 "(1) Motion.--

10 "(A) In general.--At any time after the date  
11 which is 1 year after the date on which a judgment is  
12 entered in an action brought under subsection (a)  
13 declaring that an educational institution follows a  
14 racially discriminatory policy, such institution may  
15 file with the district court a motion to modify such  
16 judgment to include a declaration that such  
17 institution no longer follows a racially  
18 discriminatory policy.

19 "(B) Affidavits.--Any motion filed under  
20 subparagraph (A) shall contain affidavits--

21 "(i) describing with specificity the ways in  
22 which the educational institution has abandoned  
23 its previous racially discriminatory policy;

24 "(ii) describing with specificity the ways  
25 in which such institution has taken reasonable  
26 steps to communicate its policy of  
27 nondiscrimination to students, to faculty, to  
28 school administrators, and to the public in the  
29 area it serves;

30 "(iii) averring that such institution has  
31 not, during the preceding year--

32 "(I) committed a racially discriminatory  
33 act against a student applicant or student  
34 pursuant to a racially discriminatory policy,



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1           “(II) made a communication expressing  
2           that it follows a racially discriminatory  
3           policy against student applicants or  
4           students; or

5           “(III) engaged in a pattern of conduct  
6           intended to implement a racially  
7           discriminatory policy, and <sup>committed</sup> ~~that~~ some act in  
8           furtherance of this pattern of conduct; ~~has~~  
9           ~~been committed during the preceding year, and~~

10          “(iv) averring that such institution has  
11          complied with the requirements of section 44H (d)  
12          (3) (D).

13          “(2) Order.--If a motion is made under paragraph  
14          (1), the district court shall issue an order modifying  
15          the judgment entered in the action to include a  
16          declaration that the educational institution no longer  
17          follows a racially discriminatory policy unless the  
18          Attorney General establishes that--

19               “(A) any affidavit provided by the institution  
20               under paragraph (1) (B) is false;

21               “(B) the institution has, during the preceding  
22               year, committed any act, made any communication, or  
23               engaged in any pattern of conduct described in  
24               paragraph (1) (B) (iii); or

25               “(C) the institution has not, in fact, complied  
26               with the requirements of clauses (ii) and (iv) of  
27               paragraph (1) (B).

28          “(3) Appeal of orders.--Any order of the district  
29          court granting or denying a motion made under paragraph  
30          (1) shall be reviewable.

31          “(g) Attorneys' Fees.--If an educational institution  
32          prevails in an action under this section, the court may award  
33          the institution costs and reasonable attorneys' fees in such

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1 action.

2 ``(h) Definitions.--For purposes of this section--

3 ``(1) Racially discriminatory policy.--The term

4 'racially discriminatory policy' has the meaning given to  
5 such term by section 44H (c) (4).

6 ``(2) Racially discriminatory act.--

7 ``(A) In general.--An educational institution  
8 commits a racially discriminatory act if such  
9 institution refuses, on the basis of race, to--

10 ``(i) admit any applicant as a student;

11 ``(ii) admit any student to the rights,  
12 privileges, programs, and activities generally  
13 made available to students by the educational  
14 institution; or

15 ``(iii) allow any student to participate in  
16 its scholarship, loan, athletic, or other  
17 programs.

18 ``(B) Quotas, etc.--The term 'racially  
19 discriminatory act' shall not include the failure of  
20 such institution to pursue or achieve any racial  
21 quota, proportion, or representation in the student  
22 body.

23 ``(C) Race.--The term 'race' shall include color  
24 or national origin.

25 ``(i) Report.--Within 90 days of the close of each  
26 calendar year, the Attorney General shall submit a report to  
27 the Congress concerning the disposition during such calendar  
28 year of--

29 ``(1) any allegations of discrimination received by  
30 the Attorney General, and

31 ``(2) any actions brought under this section.''.  
32

32 (b) Conforming Amendments.--

33 (1) The table of sections for subchapter A of chapter  
34 76 of such Code (relating to civil actions by the United

1 States) is amended by striking out the item relating to  
2 section 7408 and inserting in lieu thereof:

``Sec. 7408. Declaratory judgment relating to  
racially discriminatory policies of  
schools.

``Sec. 7409. Cross references.''.

3 (2) Section 2201 of title 28, United States Code  
4 (relating to creation of declaratory judgment remedy) is  
5 amended by striking out ``section 7428'' and inserting in  
6 lieu thereof ``section 7408 or 7428''.

7 SEC. 5. TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE.

8 Tax credits claimed under section 44H of the Internal  
9 Revenue Code of 1954 shall not constitute Federal financial  
10 assistance to educational institutions or to the recipients  
11 of such credits.

12 SEC. 6. EFFECTIVE DATE; SPECIAL RULE.

13 (a) Certification Required.--The amendments made by this  
14 Act shall not take effect until the Attorney General  
15 certifies to the Secretary of the Treasury that, pursuant  
16 to--

17 (1) an Act of Congress which has been enacted, or

18 (2) a final decision of the United States Supreme

19 Court,

20 the Internal Revenue Code of 1954 prohibits the granting of  
21 tax exemption under section 501 (a) by reason of section 501  
22 (c) (3) to private educational institutions maintaining a  
23 racially discriminatory policy or practice as to students.

24 (b) Application When Certification is Made.--

25 (1) In general.--If the certification described in  
26 subsection (a) is made to the Secretary of the Treasury--

27 (A) except as provided in paragraph (2), the  
28 amendments made by section 3 shall apply with respect  
29 to expenditures made after the date on which such  
30 certification is made to the Secretary of the  
31 Treasury in taxable years beginning after December  
32 31, 1982, and ending after such date, and

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1 (B) the amendments made by section 4 shall take  
2 effect on the date on which such certification is  
3 made to the Secretary of the Treasury.

4 (2) No application before July 31, 1983.--In no event  
5 shall the amendments made by section 3 apply with respect  
6 to expenditures made before August 1, 1983.

7 (c) Estimated Income Tax and Wage Withholding.--

8 (1) Estimated income tax.--Any credit allowable to  
9 any taxpayer under section 44H of the Internal Revenue  
10 Code of 1954 shall not be taken into account under  
11 section 6015 (d) in determining the estimated tax of such  
12 taxpayer for any taxable year beginning before January 1,  
13 1984.

14 (2) Wage withholding.--Any credit allowable under  
15 section 44H of such Code shall not be taken into account  
16 in determining the number of withholding exemptions to  
17 which any taxpayer is entitled under section 3402 of such  
18 Code with respect to remuneration paid before January 1,  
19 1984.

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Amend the title to read as follows: To amend the Internal  
Revenue Code of 1954 to provide a Federal income tax credit  
for tuition.

Passed the House of Representatives October 6, 1981.

Attest:

EDMUND L. HENSHAW, JR.,

Clerk.