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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

August 6, 1985

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer
Department of Justice
Department of the Treasury

SUBJECT: Education's draft bill, "Equal Educational Opportunity Act of 1985."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than Wednesday, August 21, 1985. Secretary Bennett wants this bill on the Hill the day Congress returns.

Questions should be referred to Barry White (395-4532) or to Lisa Berger (395-3923), the legislative analyst in this office.

151 (mod) Naomi R. Sweeney
Naomi R. Sweeney for
Assistant Director for
Legislative Reference

Enclosures
cc: Bayla White
Bernie Martin
Naomi Sweeney
Mike Horowitz
Bob Sweet, OPD

Barry White
Waiting on
naomis review
before they do anything
Further w/it

8/8/85 mt. phoned RWS.
Reviewed & has no problems
w/ draft bill.



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

The Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

DRAFT

Dear Mr. Speaker:

I have enclosed, for consideration of the Congress, The Equity and Choice Act of 1985 (TEACH), a bill to allow local educational agencies the option of administering grants under Chapter 1 of the Education Consolidation and Improvement Act of 1981 wholly or in part as a voucher program. I have also enclosed a section-by-section analysis that describes the major features of the bill.

Enactment of this legislation would accomplish several important goals:

- o It would increase educational opportunities for deprived children by expanding the range of choices available to them under Chapter 1, the largest program of Federal assistance to elementary and secondary education.
- o It would serve the cause of social justice by providing disadvantaged families with some of the educational choices already available to affluent families.
- o It would increase the discretion of local authorities by allowing them to use their Federal Chapter 1 funds in a new way.
- o It would improve the quality of Chapter 1 services by increasing parental choice and involvement, and by promoting competition among schools.
- o It would be an appropriate response to the Supreme Court's recent decision in Aguilar v. Felton, in which the Court held unconstitutional New York City's program of sending school district employees into private schools to provide Chapter 1 services to disadvantaged students. This decision has made vastly more difficult the task of fulfilling Congress' mandate that these services be provided to all disadvantaged students on an equitable basis. This legislation would allow for the implementation of the congressional mandate in a way that is constitutionally sound.

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Page Two - The Honorable Thomas P. O'Neill, Jr.

Under the TEACH bill, a local educational agency (LEA) could choose to use its Chapter 1 compensatory education funds in a voucher format. In such a case, the parent of an educationally deprived child participating in the Chapter 1 program would receive a certificate that could be used to receive Chapter 1 or other compensatory educational services in either the local public school or in another public school in the same school district (as permitted by that district's normal enrollment policies), or that could be used for payment of tuition at a public school in another school district, or at a private school.

The amount of the certificate that parents could redeem to pay tuition would be determined by dividing the total Chapter 1 allocation received by the LEA, less funds necessary for program administration, by the number of children in the district selected for participation in Chapter 1. This amount, however, could not be more than the tuition normally charged by the school or the actual tuition cost incurred by the parents. Under this legislation, each school district would have the choice of using its Chapter 1 funds in this fashion.

I urge Congress to help the cause of educational opportunity by acting promptly and favorably on this legislation.

The Office of Management and Budget advises that enactment of this proposed legislation would be in accord with the program of the President.

I am also sending a copy of this proposal to the President of the Senate.

Sincerely,

William J. Bennett

Enclosures

CHAPTER 1 VOUCHER BILL
COMPARISON OF 1985 AND 1983 PROPOSALS

TOPIC	1985 BILL	1983 BILL
1. Title	The Equity and Choice Act of 1985 (TEACH)	Equal Educational Opportunity Act of 1983
2. Congressional Findings [§2(a)]	The Congress finds that significant improvements in the educational achievement of educationally deprived children can be accomplished by — (1) increasing the opportunity for educationally deprived children by expanding the range of educational choices that best meet the needs of children; (2) fostering diversity and competition among school programs for educationally deprived children; (3) providing social justice for the families of these children by giving them some of the educational choices already available to affluent families; and (4) enhancing the quality of Chapter 1 instruction, and American education in general, by increasing parental involvement in the program and the direction of the child's education.	Same introduction (1) expanding the opportunities for parents of educationally deprived children to choose schools that best meet the needs of their children; (2) same; and (3) increasing private sector involvement in providing educational programs for educationally deprived children. (4) No such provision.
3. Purpose [§2(b)]	To authorize the use of ECIA, Chapter 1 funds for educational vouchers which parents of educationally deprived children may use to pay for educational programs and services for these children at public or private elementary or secondary schools.	Same.

TOPIC	1985 BILL	1983 BILL
4. Decision to conduct voucher program [§560(b)(1)]	At option of each LEA, provided that SEA approves its application.	Each SEA could require all LEAs in State to implement a voucher program. LEA could choose to implement a program if SEA did not do so.
5. Public participation in decision [§560(b)(2)]	LEA must decide whether to have a voucher program each year after holding a public meeting, to which it must invite all parents of eligible students and representatives of private schools, to discuss voucher program. LEA could use the annual Chapter 1 meeting required under §556(e)(1).	No express provision. General requirements of Chapter 1 statute and regulations pertaining to parent involvement would apply.
6. Selection of recipients [§560(c)(1)]	Vouchers would be provided to parents of educationally deprived children, selected in accordance with normal Chapter 1 criteria. LEA has discretion to distribute vouchers to some or all parents, so long as program provides for equitable participation of parents of children in both public and private schools. (An LEA could, for example, conduct an experimental or model program involving one or more attendance areas or only certain grade levels.)	Same. LEA has discretion to distribute vouchers to some or all parents, subject to any State requirements.
7. Uses of vouchers by parent [§560(c)(2)]	Each parent who receives a voucher could do any of the following: (1) Continue to enroll the child in the public elementary or secondary school serving the school attendance area in which the child resides, and use the voucher to obtain compensatory services through the LEA's regular Chapter 1 program. (This is what would be available in the absence of a voucher program.)	(1) Obtain compensatory services selected by parents from among the various compensatory programs conducted by the LEA.

TOPIC	1985 BILL	1983 BILL
	(2) Enroll the child in any other school of the LEA permitted by the LEA's normal enrollment policies, and use the voucher to obtain compensatory services designed to meet the special educational needs of the child. Services under this option need not be provided under a regular Chapter 1 project unless the LEA would have conducted such a project at that school in the absence of a voucher program. (3) Defray the cost of tuition for enrolling the child as a full-time student at any eligible private school. (4) Defray the cost of tuition for enrolling the child as a full-time student at any public school outside the LEA in which the child resides.	(2) No such provision. (3) Same. (4) Same.
8. Redemption of vouchers [§560(c)(3)]	By parents.	By private schools or LEA outside LEA in which child resides.
9. Amount of vouchers when used for tuition payments [§560(c)(3)]	May not exceed lesser of— (1) The LEA's Chapter 1 allocation (minus amount necessary for program administration) —divided by— number of children selected to participate in the Chapter 1 program. (2) Maximum tuition generally charged by school at which child is enrolled. (3) Parent's actual tuition cost for enrolling the child.	Amount described in (1), with no limiting provisions like (2) or (3).

TOPIC	1985 BILL	1983 BILL
10. Continued provision of regular Chapter 1 program services [§560(d)]	LEA must continue to provide regular Chapter 1 program services to— (1) children whose parents choose to use vouchers for those services; and (2) children selected for participation in Chapter 1 program whose parents do not receive vouchers.	Same.
11. LEA application	Subject to SEA approval	Same.
a. maximum period	3 years.	Same.
b. necessary assurances [§560(e)]	LEA must assure that— 1. It will keep such records and provide such information as SEA may require for fiscal audit and program evaluation. 2. Voucher program meets requirements of bill. 3. It will exercise "due diligence" to ensure that voucher funds paid to parents will be used only for tuition costs permitted by the bill and to recover payments that are not so used.	Same. Same. No such provision.
12. Voucher funds not "federal financial assistance" [§560(f)]	The bill provides that tuition payments to a private school or to a public school located outside of the district in which the child resides, made by parents with voucher funds, do not constitute federal financial assistance to that school, and that the use of those funds by that school is not a program or activity receiving Federal financial assistance. (This provision would mean that receipt and use of voucher funds paid by parents to these schools would not subject these schools to the requirements of Title VI	Same provision, except that it referred to vouchers as well as voucher funds (since vouchers were to be redeemed by schools rather than by parents).

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of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, or other Federal nondiscrimination statutes relating to the receipt of Federal financial assistance. Special nondiscrimination provisions relating to race, discussed below, are included in the bill.)

13. Eligible
private
schools
[§560(g)(2)(B)]

Parents may use voucher funds at any private school which meets each of the following requirements:

1. It provides a full-time program of elementary or secondary education. (The school would not need to meet State education standards.)

2. It is an "educational organization" within the meaning of an Internal Revenue Code provision relating to deductions for charitable contributions. (The Code defines an educational organization as one which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance where its educational activities are regularly carried on.)

Parents could use vouchers at any private school which meets each of the following requirements:

1. It is an "elementary or secondary school", whether day or residential, which provides elementary or secondary education, not including any education beyond grade 12. (Because the ECIA defines "elementary school" and "secondary school" in terms of State law, this bill would not have authorized parents to use vouchers at private schools that did not meet State education standards and requirements.)

2. Same, except that the Internal Revenue Code provision was incorporated into the bill through substantive text rather than by reference.

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Note: Parents could use voucher funds at for-profit, as well as non-profit private schools.

3. No such provision.

4. It includes in any published bylaws, advertisements, admission application forms, and other published materials, a statement that it does not discriminate against student applicants or students on the basis of race.

14. Nondiscrimination by private schools
[§560A(a)]

LEA may not make voucher payments to a parent with respect to an eligible child enrolled in a private school if the school discriminates against students or student applicants on the basis of race. Race is defined to include national origin.

15. Enforcement of nondiscrimination requirement
[§560A(a)(3), (b)]

The Attorney General has exclusive authority to investigate whether a school is following a racially discriminatory policy. If the Attorney General receives a written allegation of discrimination concerning a school and determines that there is good cause, he must seek a declaratory judgment in the U.S. district court for the district where the school is located. Voucher funds may not be paid to the school if the district court enters a judgment declaring that the school follows a racially discriminatory policy or if a U.S. court of appeals orders the district court to enter such a judgment.

3. It is not under public supervision or control.

4. Same, with additional provision that the Secretary shall, by regulation, prescribe the form and manner of the statement of nondiscrimination.

Same, except that LEA could not make payments to the school itself.

Same.

TOPIC	1985 BILL	1983 BILL
16. Use of vouchers under "bypass" authority [§4(1)(D)-(I)]	The Secretary is authorized to arrange for the provision of vouchers, as well as direct services, when a bypass is necessary either because an LEA is prohibited by law from providing services and vouchers for private school children or because the LEA has substantially failed to provide services or vouchers.	No such provision.

WHITE HOUSE TALKING POINTS

November 14, 1985

ADMINISTRATION INITIATIVE FOR EDUCATIONAL OPPORTUNITY

The Equity and Choice Act of 1985

Voucher

The Reagan Administration has unveiled The Equity and Choice (TEACH) Act of 1985, to provide greater opportunity in education through a voucher plan.

TEACH, unveiled by Education Secretary William Bennett on November 13, continues and builds upon progress achieved since the Reagan Administration sparked a grassroots education reform movement in early 1983.

Vouchers will be provided directly to parents of children eligible under Chapter 1, a federal program that currently provides \$3.2 billion to state and local authorities to provide special educational help to approximately 5 million disadvantaged children.

Parents will use these vouchers to enroll their children in the public or non-public school which best suits their educational needs.

Benefits of TEACH

The Administration's proposed legislation is a bold initiative to promote greater educational opportunity and excellence.

- o TEACH gives poor families some of the choice and flexibility already available to more affluent families.
- o The Administration's voucher proposal introduces some healthy competition into the American education system -- giving incentives to all schools, public and private, to improve curricula and services for educationally disadvantaged students.
- o The voucher program would not require additional tax dollars -- existing Federal Chapter 1 appropriations would be used.

Moreover, TEACH is a sound response to the U.S. Supreme Court's Felton decision, which prohibits the provision of Chapter 1 services by public school teachers to children on religious school premises. Voucher funds go to parents, not teachers or schools, avoiding potential Constitutional entanglements.

Public Opinion and Choice

According to a 1985 Gallup Poll, 59 percent of black Americans and a similar majority of persons living in central cities support an educational voucher system.

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To improve the educational achievement of educationally deprived children by expanding opportunities for their parents to choose schools that best meet their needs, to foster diversity and competition among school programs for educationally deprived children, to increase private sector involvement in providing educational programs for educationally deprived children, and for other purposes.

Yellen

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Equity and Choice Act of 1985".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that significant improvements in the educational achievement of educationally deprived children can be accomplished by--

(1) increasing the opportunity for educationally deprived children by expanding the range of educational choices that best meet the needs of children;

(2) fostering diversity and competition among school programs for educationally deprived children;

(3) providing social justice for the families of these children by giving them some of the educational choices already available to affluent families; and

(4) enhancing the quality of Chapter 1 instruction, and American education in general, by increasing parental involvement in the program and the direction of the child's education.

(b) It is the purpose of this Act to authorize use of funds under chapter 1 of the Education Consolidation and Improvement Act of 1981 for educational vouchers which parents of

educationally deprived children may use to pay for educational programs and services for these children at public or private elementary or secondary schools.

EDUCATIONAL VOUCHERS

SEC. 3. Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801 et seq.; hereinafter referred to as "the Act") is amended by adding at the end thereof the following new sections:

"EDUCATIONAL VOUCHERS

"SEC. 560. (a) GENERAL.--Payments to local educational agencies under this chapter may be used for educational voucher programs in which--

"(1) parents of educationally deprived children who decide to enroll their children at public elementary and secondary schools serving the school attendance areas in which the children reside use vouchers to obtain compensatory services for such children under programs or projects that the local educational agency for such schools provides in accordance with the requirements of section 555;

"(2) parents of educationally deprived children who reside in local educational agencies that permit parents to enroll their children at public elementary and secondary schools of such agencies, other than schools serving the school attendance areas in which the children reside, use vouchers to obtain compensatory services for such children provided by the local

educational agency to meet their special educational needs at such other schools;

"(3) parents of educationally deprived children use voucher funds as payment toward tuition for enrolling these children as full-time students at private eligible educational institutions; or

"(4) parents of educationally deprived children use voucher funds as payment toward tuition for enrolling these children as full-time students at public elementary or secondary schools located outside of the school district in which the children reside.

"(b) DECISION TO CONDUCT PROGRAM.--(1) Each local educational agency within a State shall have discretion to use the funds it receives under this chapter to implement an educational voucher program, provided that the State educational agency approves its application under subsection(e).

"(2) Each local educational agency shall determine annually whether to implement an educational voucher program after convening a public meeting, such as the annual meeting required under section 556(e)(1), to which all parents of eligible students and representatives of private eligible educational institutions shall be invited, to discuss such a program.

"(c) AUTHORIZED PROGRAMS.--An educational voucher program under this section shall--

"(1) provide for the distribution of vouchers to parents of educationally deprived children selected in accordance with sections 556(b)(1) and (2) and 557(a), except that the local educational agency shall have discretion to distribute

the vouchers to some or all of such parents, provided that the program provides for the equitable participation of parents of children enrolled in both public elementary and secondary schools and private eligible educational institutions;

"(2) permit a parent who receives a voucher for that parent's eligible child under this section only--

"(A) to use the voucher to obtain services made available under programs or projects that the local educational agency provides in accordance with the requirements of section 555 at the public elementary or secondary school serving the school attendance area in which the child resides;

"(B) to use the voucher to obtain compensatory services to meet the child's special educational needs at any public elementary or secondary school outside the school attendance area in which the child resides if the local educational agency permits the parent to enroll his child at such a school, in which case such services need not be made available under programs or projects that meet the requirements of section 555 unless the local educational agency would conduct such a program or project at such school in the absence of an educational voucher program;

"(C) to use the voucher funds as payment toward tuition for enrolling such child as a full-time student at a private eligible educational institution; or

"(D) to use the voucher funds as payment toward tuition for enrolling such child as a full-time student at a public elementary or secondary school located outside of the school district in which the child resides; and

"(3) provide that a parent who receives a voucher under this section, and who decides to enroll his child as a full-time student at a private eligible educational institution, or at a public elementary or secondary school located outside of the school district in which the child resides, may redeem the voucher for funds under this chapter in an amount equal to the lesser of--

"(A) the quotient of the amount of funds under this chapter that the local educational agency administering the educational voucher program plans to expend in the fiscal year in which the voucher is to be redeemed, less funds necessary for program administration, divided by the number of educationally deprived children selected by such local educational agency for participation under this chapter for such fiscal year in accordance with sections 556(b)(1) and (2) and 557(a);

"(B) the maximum tuition normally charged by the eligible educational institution; or

"(C) the parent's actual tuition cost for enrolling the eligible child at the eligible educational institution.

"(d) LOCAL EDUCATIONAL AGENCY PROGRAMS AND PROJECTS.--A local educational agency shall provide programs and projects, in accordance with the provisions of this chapter, to meet the special educational needs of--

"(1) eligible children of parents who decide to use their educational vouchers for such programs and projects provided by the local educational agency, in accordance with subsection (c)(2)(A); and

"(2) children selected by the local educational agency for participation in programs and projects under this chapter in accordance with sections 556(b)(1) and (2) and 557(a) whose parents do not receive educational vouchers from the local educational agency.

"(e) APPLICATION BY LOCAL EDUCATIONAL AGENCY.--(1) A local educational agency that conducts an educational voucher program under this section shall have on file with the State educational agency an application which describes the program to be conducted for a period of not more than three years.

"(2) The application shall be approved by the State educational agency if it provides assurances satisfactory to the State educational agency that--

"(A) the local educational agency will keep such records and provide such information to the State educational agency as may be required for fiscal audit and program evaluation;

"(B) the educational voucher program described meets the requirements of subsection (c); and

"(C) the local educational agency will exercise due diligence to ensure that payments made to parents under subsection (c)(3) will be used only for the purposes authorized by subsection (c)(2)(C) and (D) and to recover such payments that are not so used.

"(f) VOUCHER IS NOT FEDERAL ASSISTANCE.--Payments to a private eligible educational institution or to a public school located outside of the school district in which the eligible child resides, made by parents with funds provided by a local

educational agency pursuant to an educational voucher program under this chapter, shall not constitute Federal financial assistance to the private eligible educational institution or public elementary or secondary school receiving such payments, and the use of such funds by a private institution or by a public elementary or secondary school located outside of the school district in which the child resides shall not constitute a program or activity receiving Federal financial assistance.

"(g) DEFINITIONS.--As used in this section--

"(1) the term 'eligible child' means an educationally deprived child for whom an educational voucher is provided to a parent under this section.

"(2) the term 'eligible educational institution' means--

"(A) a public elementary or secondary school, as defined in section 595(a)(7) of this subtitle; or

"(B) a private educational institution--

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

"(ii) which is an educational organization within the meaning of section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1954 (relating to deductions for charitable contributions); and

"(iii) which includes in any published bylaws, advertisements, admission application forms, and other published materials a statement that it does not discriminate against student applicants or students on the basis of race.

"(h) APPLICABILITY OF CHAPTER 1 PROVISIONS.--The following provisions of this chapter shall not be applicable to educational voucher programs under this section:

"(1) sections 555(a), (b), and (c), except that local educational agency programs and projects under subsection (d) of this section shall be subject to sections 555(a) and (c); and

"(2) section 556, except to the extent it is made applicable by subsection (c) of this section."

"NON-DISCRIMINATION BY PRIVATE SCHOOLS IN VOUCHER PROGRAM

"SEC. 560A. (a) GENERAL.--(1) No local educational agency conducting an educational voucher program under section 559 may make payments to a parent under section 559(c)(3) with respect to a child enrolled in a private eligible educational institution if--

"(A) there is in effect a judgment entered by a district court of the United States under subsection (b) (regardless of whether such judgment is appealed) declaring that such institution follows a racially discriminatory policy; or

"(B) an order by any United States court of appeals has been made which, by its terms, requires the district court to enter such a judgment.

"(2) No local educational agency conducting an educational voucher program under section 559 may make payments to a parent under section 559(c)(3) with respect to a child enrolled or to be enrolled in a private eligible educational institution unless such institution has filed with such educational agency a verified statement which--

"(A) declares that such institution has not followed a racially discriminatory policy during the previous twelve months;

"(B) indicates whether a declaratory judgment or order described in paragraph (1) has been entered against such institution in an action brought under subsection (b); and

"(C) attests that such institution has complied with the requirements of section 560(g)(2)(B)(iii) during the previous twelve months.

"(3) The Attorney General shall have exclusive authority under this subsection to investigate and to determine whether a private eligible educational institution is following a racially discriminatory policy.

"(4) For purposes of this subsection--

"(A) an 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 institution; or

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

"(B) the term 'racially discriminatory policy' shall not include failure of any institution to pursue or achieve any racial quota, proportion, or representation in the student body.

"(C) The term 'race' shall include color or national origin.

"(b) DECLARATORY JUDGMENT.--(1) Upon filing of an appropriate pleading by the Attorney General under paragraph (2), the district court of the United States for the district in which a private eligible 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.

"(2)(A) The Attorney General is authorized and directed to seek a declaratory judgment under paragraph (1) against any private eligible educational institution upon--

"(i) receipt by the Attorney General within the previous one-year period of any allegation of discrimination against such institution; and

"(ii) a finding by the Attorney General of good cause.

"(B) For purposes of this section, the term 'allegation of discrimination' means an allegation made in writing by any person which alleges with specificity that--

"(i) a named 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

"(ii) the institution made a communication, within one year preceding such date, expressing that it follows a racially discriminatory policy.

"(C) Upon receipt of any allegation of discrimination made against an institution, the Attorney General shall promptly give written notice of such allegation to such institution.

"(D) Before any action may be filed against an institution by the Attorney General under paragraph (1), the Attorney General shall give such 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.

"(i) If an allegation of discrimination against an institution is made to the Attorney General and the Attorney General--

"(I) declines to bring an action under paragraph (1) against such institution, or

"(II) enters into a settlement agreement with such institution under paragraph (4) 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 agreement. The Attorney General shall promptly give written notice to such person that such information is available for his inspection.

"(ii) Nothing in this subparagraph shall be construed to authorize or require the Attorney General to disclose any information if such disclosure would violate any applicable State or Federal law relating to privacy.

"(3) A district court may declare that a private eligible educational institution follows a racially discriminatory policy in an action brought under paragraph (1) only if the Attorney General establishes in such action that--

"(A) such institution has, pursuant to such policy, committed a racially discriminatory act against a student applicant or student within the two years preceding commencement of such action;

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

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

"(4)(A) Prior to, and in lieu of, filing an action under paragraph (1), the Attorney General may, at his discretion, enter into a settlement agreement with the institution against which an allegation of discrimination has been made if the Attorney General finds that such institution has been acting in good faith and has abandoned its racially discriminatory policy.

"(B) If the Attorney General has entered into a settlement agreement with an institution under subparagraph (A) and the Attorney General finds that such institution is in violation of such agreement, the Attorney General may--

"(i) notwithstanding paragraph (2)(A)(i), bring an action under paragraph (1) without having received any allegation of discrimination against such institution; or

"(ii) bring an action to enforce the terms of such agreement.

"(C) The Attorney General shall give a copy of any settlement agreement which is entered into with any institution under subparagraph (A) to any person from whom the Attorney General has received an allegation of discrimination against such institution.

"(5) Any district court that makes a declaration under paragraph (1) that a private eligible educational institution follows a racially discriminatory policy shall retain jurisdiction of such case.

"(6)(A)(i) At any time after the date which is one year after the date on which a judgment is entered in an action brought under paragraph (1) declaring that a private eligible educational institution follows a racially discriminatory policy, such institution may file with the district court a motion to modify such judgment to include a declaration that such institution no longer follows a racially discriminatory policy.

"(ii) Any motion filed under clause (i) shall contain affidavits--

"(I) describing with specificity the ways in which the institution has abandoned its previous racially discriminatory policy;

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

"(III) averring that such institution has not, during the preceding year--

"(aa) committed a racially discriminatory act against a student applicant or student pursuant to a racially discriminatory policy;

"(bb) made a communication expressing that it follows a racially discriminatory policy against student applicants or students; or

"(cc) engaged in a pattern of conduct intended to implement a racially discriminatory policy, and committed some act in furtherance of this pattern of conduct; and

"(IV) averring that such institution has complied with the requirements of this section.

"(B) If a motion is made under subparagraph (A), the district court shall issue an order modifying the judgment entered in the action to include a declaration that the institution no longer follows a racially discriminatory policy unless that Attorney General establishes that--

"(i) any affidavit provided by the institution under subparagraph (A)(ii) is false;

"(ii) the institution has, during the preceding year, committed any act, made any communication, or engaged in any pattern of conduct described in subparagraph (A)(ii)(III); or

"(iii) the institution has not, in fact, complied with the requirements of subclauses (II) and (IV) of subparagraph (A)(ii).

"(C) Any order of the district court granting or denying a motion made under subparagraph (A) shall be reviewable.

"(7) If an institution prevails in an action under this section, the court may award such institution costs and reasonable attorneys' fees in such action.

"(8) For purposes of this section--

"(A) The term 'racially discriminatory policy' has the meaning given to such term by subsection (a)(4).

"(B)(i) A private eligible educational institution commits a racially discriminatory act if such institution refuses, on the basis of race, to--

"(I) admit any applicant as a student;

"(II) admit any student to the rights, privileges, programs, and activities generally made available to students by the institution; or

"(III) allow any student to participate in its scholarship, loan, athletic, or other programs.

"(ii) The term 'racially discriminatory act' shall not include the failure of such institution to pursue or achieve any racial quota, proportion, or representation in the student body.

"(C) The term 'race' shall have the meaning given to that term by subsection (a)(4).".

TECHNICAL AND CONFORMING AMENDMENTS TO CHAPTER 1

SEC. 4. Chapter 1 of the Act is further amended--

(1) in section 557--

(A) by inserting in the first sentence of subsection (a) a dash and "(1)" after "such agency shall";

(B) by striking out in the first sentence of subsection (a) the period at the end thereof and inserting in lieu thereof a semicolon and the following: "or (2) provide educational vouchers to the parents of such children in accordance with section 560.";

(C) by inserting in the second sentence of subsection (a) "and for educational vouchers" after "arrangements";

(D) by inserting in subsection (b)(1) a comma and "and from providing educational vouchers to the parents of these children," after "elementary and secondary schools";

(E) by inserting in subsection (b)(1) a comma and "or provide an educational voucher program in accordance with section 560" before the period at the end thereof;

(F) by inserting in subsection (b)(2) "or provide an educational voucher program in accordance with section 560," after "requirements of subsection (a),";

(G) by inserting in subsection (b)(3)(A) "or educational voucher programs" after "arranges for services";

(H) by inserting in subsection (b)(3)(A) "or programs" after "such services" each place it appears; and

(I) by inserting in subsection (b)(3)(B) "or programs" after "such services"; and

(2) in section 558--

(A) by adding at the end of subsection (b) the following new sentence: "Nothing contained in this subsection shall be construed to prohibit the use of funds provided to parents under an educational voucher program for payments to an eligible educational institution under section 560(c)(2)(C) and (D), notwithstanding that such payments would have been made from non-Federal sources in the absence of funds under this chapter.";

(B) by adding at the end of subsection (c)(1) the following new sentence: "An attendance area shall not be considered a project area for the purposes of this paragraph solely because a parent receiving an educational voucher under section 560 chooses to enroll his eligible child at a school in that attendance area in accordance with section 560(c)(2)(B)."; and

(C) by adding at the end thereof the following new subsection:

"(f) EDUCATIONAL VOUCHERS.--Payments made by parents with voucher funds under section 560(c)(2)(C) or (D) to a private eligible educational institution or to a public elementary or secondary school located outside of the school district in which the child resides shall not subject such private institution or public school, or the local educational agency for such public school, to the requirements of this section."

DISCLOSURE OF INFORMATION TO ATTORNEY GENERAL

SEC. 5. Subsection (h) of section 6103 of the Internal Revenue Code of 1954 (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 560A(a)(3) of the Education Consolidation and Improvement Act of 1981 with regard to whether an institution is following a racially discriminatory policy (within the meaning of section 560A(a)(4) of such Act), or

"(B) any proceeding which may be brought under section 560A(b) of such Act,

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."

CONFORMING AMENDMENTS TO TITLE 28

SEC. 6. Section 2201 of title 28, United States Code (relating to creation of the declaratory judgment remedy) is amended by striking out "section 7428" and inserting in lieu thereof "section 7408 or section 560A of the Education Consolidation and Improvement Act of 1981".

EFFECTIVE DATE

SEC. 7. The amendments made by this Act shall take effect on July 1, 1986.

* * *

JUL 25 1985

THE EQUITY AND CHOICE ACT OF 1985

Section-by-Section Analysis

Section 2. Section 2 of the bill sets forth congressional findings and the purpose of the bill. Subsection (a) includes findings that significant improvements in the educational achievement of educationally deprived children can be accomplished by increasing the opportunity for educationally deprived children by expanding the range of educational choices that best meet the needs of children, fostering diversity and competition among school programs for educationally deprived children, providing social justice for the families of these children by giving them some of the educational choices already available to affluent families, and enhancing the quality of Chapter 1 instruction, and American education in general, by increasing parental involvement in the program and the direction of the child's education.

Subsection (b) sets forth the purpose of the bill to authorize the use of funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) for educational vouchers which parents of educationally deprived children may use to obtain educational programs and services for these children.

Section 3. Section 3 of the bill would amend Chapter 1 of the ECIA to authorize educational voucher programs by adding new sections 560 and 560A to Chapter 1. Under section 560(a), Chapter 1 payments to local educational agencies (LEAs) would be available for programs in which parents of educationally deprived children use vouchers (1) to obtain compensatory services under regular Chapter 1 programs if they choose to enroll their children in the public schools serving the school attendance areas in which the children reside, (2) to enroll their children in any school of the LEA permitted by the LEA's normal policies and obtain compensatory services, although not necessarily under a regular Chapter 1 program, or (3) to defray the cost of tuition for these children at private schools or at public schools located outside of the school district in which the children reside. An LEA could not implement a voucher plan in a manner inconsistent with an applicable desegregation order.

Under section 560(b), each LEA would have discretion to use its Chapter 1 funds for educational voucher programs and would determine annually whether to implement a voucher program after holding a public meeting to discuss the matter, to which all parents of eligible children and representatives of private schools would be invited. An LEA that chooses to conduct a voucher program would continue to provide compensatory services under its regular Chapter 1 program to eligible children not selected to participate in the voucher program, and to children whose parents receive vouchers but choose to keep their children

in the LEA's schools serving the school attendance areas in which the children reside. An LEA would also provide compensatory education services, although not necessarily through its regular Chapter 1 program, to parents who receive vouchers and choose, where permitted by the LEA's normal policies, to place their children in other schools of the LEA.

Section 560(c)(1) would provide for the distribution of vouchers to parents of educationally deprived children selected by the LEA on the same basis that these children are selected for Chapter 1 projects in the absence of an educational voucher program. Each LEA would have discretion to distribute vouchers to all or some of these parents, so long as it provided for equitable participation of parents of children enrolled in both public and private schools. An LEA might, for example, wish to conduct an experimental or model program involving one or more attendance areas or only certain grade levels.

Under subsection (c)(2), a parent could use a voucher only in one of four ways. First, the parent could continue to enroll the child in the public elementary or secondary school serving the school attendance area in which the child resides, and use the voucher to obtain Chapter 1 compensatory services provided by the LEA through its regular Chapter 1 program. Second, the parent could enroll the child in any other school of the LEA permitted by the LEA's normal enrollment policies, and use the voucher to obtain compensatory services designed to meet the special educational needs of the child. The bill does not require an LEA that implements a voucher program to adopt an "open enrollment" policy or otherwise modify its normal enrollment practices, but does allow parents in districts that permit parental choice in enrollment to fully exercise their ability to choose while continuing to obtain compensatory services for their children. Services under the second option would not have to be provided under a regular Chapter 1 project unless the LEA would have conducted such a project at that school in the absence of a voucher program. The cost of services provided under this option would not have to equal the amount of Chapter 1 funds attributable to the child, nor would the LEA be required to allocate those funds to that school. Third, the parent could use the voucher to defray the cost of tuition for enrolling the Chapter 1 child at any private eligible educational institution. Fourth, the parent could use the voucher to defray the cost of tuition for enrolling the child at a public school located outside of the school district in which the child resides. The bill does not authorize parents who receive vouchers to use those vouchers in a manner inconsistent with an applicable desegregation order.

Subsection (c)(3) would provide for a parent who received a voucher, and who chose to enroll his child at a private eligible educational institution, or at a public school located outside of the school district in which the child resides, to redeem the voucher for Chapter 1 funds. The amount of Chapter 1 funds paid

in exchange for the voucher would be equal to the amount of Chapter 1 funds allocated to the LEA administering the voucher program (minus funds necessary for program administration) divided by the number of children selected by the LEA for participation in Chapter 1 programs. This amount, however, could not exceed the maximum tuition normally charged by the school at which the child is enrolled or the actual tuition costs incurred by the parent.

Section 560(d) would require LEAs to provide Chapter 1 programs and projects to meet the special educational needs of children of parents who decide to enroll their children in the public schools which they would attend in the absence of a voucher program, and to Chapter 1 children whose parents do not receive vouchers. These programs and projects would be subject to supplement-not-supplant and comparability requirements in section 558 of Chapter 1. In addition, the maintenance of effort requirement in section 558(a) would continue to be a condition for the receipt of any Chapter 1 allocations by the LEA.

Section 560(e) would provide simplified application requirements for voucher programs. Each LEA's application would be required to include an assurance, satisfactory to the State educational agency, that the LEA will exercise due diligence to ensure that voucher funds paid to parents are used only for tuition costs authorized by section 560(c)(3).

Section 560(f) would provide that payments to a private eligible educational institution or to a public school located outside of the school district in which an eligible child resides, made by parents with voucher funds, shall not constitute federal financial assistance to that institution or school, and that the use of those funds by that institution or school shall not constitute a program or activity receiving Federal financial assistance.

Section 560(g)(1) would define the term "eligible child" used in the section. Section 560(g)(2) would define the term "eligible educational institution" to include any private educational institution which provides a full-time program of elementary or secondary education, which is an "educational organization" under section 170(b)(1)(A)(ii) of the Internal Revenue Code (i.e., an organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance where its educational activities are regularly carried on), and which does not discriminate against students or student applicants on the basis of race. Under this definition, parents could use voucher funds to pay for tuition at for-profit, as well as nonprofit, private schools. Children attending for-profit private schools are currently eligible for Chapter 1 services.

Section 560(h) would make inapplicable to voucher payments certain Chapter 1 provisions concerning project services to meet the special educational needs of educationally deprived children except when vouchers are used to enroll children in schools serving the attendance areas in which the children reside.

Under the new section 560A, no local educational agency conducting a voucher program may make voucher payments to a parent with respect to a child enrolled in a private school that follows a racially discriminatory policy. Section 560A provides that the Attorney General has exclusive authority to investigate whether a school is following a racially discriminatory policy. If the Attorney General receives a written allegation of discrimination concerning a school and determines that there is good cause, he must seek a declaratory judgment in the United States district court for the district where the school is located. Voucher funds may not be paid to the school if the district court enters a judgment declaring that the school follows a racially discriminatory policy or if a U.S. court of appeals orders the district court to enter such a judgment.

Section 560A defines a racially discriminatory policy as a policy under which a school refuses, on account of race (including color or national origin): to admit applicants as students; to admit students to the rights, privileges, programs and activities generally made available to students by the school; or to allow students to participate in its scholarship, loan, athletic, or other programs. A racially discriminatory policy does not include the failure by a school to pursue or achieve any racial quota, proportion, or representation among its students.

Section 4. Section 4 of the bill would make various technical and conforming amendments to Chapter 1 of the ECIA. Section 4(1) of the bill would make technical amendments to Chapter 1 provisions concerning equitable participation by private school children in Chapter 1 programs. These amendments would clarify that educationally deprived children in private schools would receive vouchers on the same basis as public school children, and would authorize the Secretary to arrange for the provision of vouchers, as well as direct services, when a bypass is necessary either because an LEA is prohibited by law from providing services and vouchers for private school children or because it has substantially failed to provide for the equitable participation of those children.

Section 4(2) of the bill would amend section 558 of the ECIA to provide that the prohibition of supplanting does not apply to tuition payments made by parents under the voucher program to a private school or to a public school located outside of the school district in which the child resides. Under this provision, for example, there would be no supplanting violation in providing a voucher to a parent to cover tuition payments to a private school that the Chapter 1 child would have

attended in the absence of Chapter 1 funds. Section 4(2) of the bill would also amend section 558(c) to provide that an attendance area does not become a Chapter 1 project area for purposes of the comparability requirement solely because a parent who receives an educational voucher chooses to enroll his child at a school in that area under the provisions of section 560(c)(2)(B). In addition, under proposed section 558(f), the use of voucher funds by parents for tuition at a private school or at a public school located outside of the school district in which the child resides would not subject such private or public school, or the LEA for such public school, to maintenance of effort, supplement-not-supplant, or comparability requirements in section 558.

Section 5. Section 5 of the bill would amend the Internal Revenue Code of 1954 to require the Treasury Department to provide to the Department of Justice information relevant to investigations concerning whether a private school is following a racially discriminatory policy.

Section 6. Section 6 of the bill contains a conforming amendment concerning the declaratory judgment remedy related to enforcement against private schools following a racially discriminatory policy.

Section 7. Section 7 of the bill would make the amendments made by the bill effective July 1, 1986.

* * *



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

October 25, 1985

Vouchers

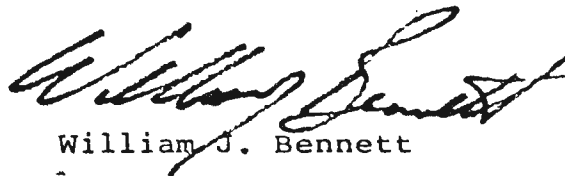
MEMORANDUM FOR THE DOMESTIC POLICY COUNCIL

Subject: Chapter I Voucher Bill

Attached is a two-page summary of an educational voucher bill that has been cleared by the Office of Management and Budget and the Department of Justice.

This issue is not a new one. The President endorsed the idea numerous times, most recently at the White House ceremony honoring exemplary schools from around the country. It will be introduced in Congress shortly. However, given that the proposal appeals to population groups not normally considered part of the Reagan coalition, we thought it would be useful to get the thoughts of the Domestic Policy Council on it as well and ask the President to elevate the issue through a speech or a Saturday morning address.

We look forward to your thoughts.


William J. Bennett

Attachment

THE EQUITY AND CHOICE ACT OF 1985 (TEACH)

The Current Chapter 1 Program

Chapter 1 of the Education Consolidation and Improvement Act authorizes federal funds to be used by local educational agencies (LEAs) to provide educational services to children who are economically and educationally disadvantaged. Fifty-five percent of these children are from minority families.

Typically, these services are provided during the regular school day by trained specialists in separate classrooms. In some cases, instruction is offered after school. To be consistent with the Supreme Court's ruling in Aguilar v. Felton, services to religiously affiliated private school students must be provided at neutral sites outside the school.

The Equity and Choice Act of 1985 (TEACH)

The President's TEACH proposal allows Chapter 1 parents to request a voucher to secure Chapter 1 benefits for their children. The parents would then choose to:

1. have their children receive compensatory services under regular Chapter 1 programs for children enrolled in public and private schools;
2. use the educational vouchers to pay for tuition, if any, or compensatory services (or for a combination of tuition and services) for their children who are enrolled at public schools outside the school attendance areas where the children reside;
3. use the educational vouchers to pay for tuition or compensatory services, or both, for their children enrolled at private schools; or
4. use the educational vouchers to pay for tuition or compensatory services, or both, for their children enrolled at public schools outside the school districts where they reside.

* No voucher could be used to enroll children in schools that are racially discriminatory. However, the mere fact that federal funds are used by parents as tuition does not render the school a recipient of federal financial assistance.

* An eligible school must have a full-time program of elementary or secondary instruction, and an employed faculty that teaches students at a regular location. The bill does not require that the school be state approved.

* The bill allows the use of Chapter 1 funds for administrative costs necessary to implement the voucher option.

* An annual public meeting, including representatives of public and private schools, parents and members of the community, will be held to discuss the uses of educational vouchers.

Benefits of TEACH

The voucher option promotes social justice and educational excellence. According to a 1985 Gallup Poll, 59 percent of blacks and 53 percent of those living in central cities support educational vouchers. TEACH provides several important benefits..

- o It gives educationally deprived children a greater range of compensatory educational alternatives.
- o It gives poor families some of the educational choices already available to affluent families who can select a school through choice of neighborhood or choice of private school.
- o It creates market incentives and competition which will lead to significant improvement in the provision of Chapter 1 services.
- o It will improve the quality of Chapter 1 instruction by encouraging greater involvement of parents in their children's education.
- o It will improve the quality of teaching. According to a Hofstra University study, teachers in choice programs are more committed to teaching and have higher levels of job satisfaction.
- o It is a constitutional method of fulfilling the congressional mandate of Chapter 1 after the Supreme Court's ruling in Aguilar v. Felton.