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# THE REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT IN A REPUBLICAN- CONTROLLED CONGRESS: A VIEW FROM THE BISHOPS' CONFERENCE

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*The Elementary and Secondary Education Act (ESEA) of 1965, the largest single federal education program, is due to be reauthorized in 1999. ESEA is aimed at offering a variety of services to students and staff in public, private, and religious schools. For the first time, reauthorization will take place in a Congress with Republican majorities in both houses. The idea of the Republicans radically altering the program has been raised in many circles. This article addresses the purpose and history of ESEA as well as the prospects for any radical reshaping of the statute in the current reauthorization process.*

The Elementary and Secondary Education Act (ESEA) was passed by Congress and signed into law (P.L. 89-10) by President Johnson in 1965 as part of his Great Society program. ESEA was originally intended to offer specific types of services to educationally disadvantaged students enrolled in public, private, and religious schools and living in areas identified as having high concentrations of low-income families. The services were augmented by other programs that allowed for the purchase of instructional resources, the development of innovative curricula and instructional approaches, educational research, and aid to state educational agencies. ESEA has, over 30 years, evolved into the largest single federal education bill, with a current annual appropriation of approximately \$13 billion.

Since its initial passage, ESEA has been reauthorized nine times. As a result, ESEA has become more detailed and specific. Numerous programs not initially covered in the original five Titles have been added and Title VI has moved out of ESEA to become a separate program. Therefore, almost all

of the federal education programs affecting elementary and secondary education have been part of ESEA at some point in their history (Committee on Education and Labor, 1985). The current version of ESEA (P.L. 103-382), passed in 1994, is due to expire in September, 1999; therefore Congress and the administration will be working toward a reauthorization in the first session of the 106th Congress. For the first time in the history of this major federal program, its reauthorization will be handled by a Congress with Republican majorities in both houses.

As the tenth reauthorization approaches, the basic premise that will guide the United States Catholic Conference (USCC) in this process can be found in its document *Principles for Educational Reform in the United States*, which says:

When services that are aimed at improving the educational environment—especially for those most at risk—are available to students and teachers in public schools, these services should also be available to students and teachers in private and religious schools. These individuals should not be penalized for choosing to enroll or work in these schools since they also serve the common good of our nation. (1995a, p. 8)

Based on this principle, the equitable participation of private and religious school students and teachers in programs and services provided under ESEA is a right not to be denied.

Against that background, the question that those who see ESEA as a historic event and a major contribution to the education of our young people, especially those most educationally at risk, are trying to answer is: Will the political reality of a Republican-controlled Congress produce any major changes in ESEA in the upcoming reauthorization process?

## **HISTORICAL BACKGROUND**

In 1985, the 20th anniversary of the enactment of ESEA, Samuel Halperin, a senior fellow at the Institute for Educational Leadership, called ESEA both a political and a historic event. It was political because it ended over 100 years of failed efforts to establish a clear federal responsibility for the improvement of elementary and secondary education. It was historic because Congress had been debating, without success, the federal financial responsibility for elementary and secondary schools since the Civil War. It is interesting to note that this failure to succeed continued even after both major parties pledged to support federal aid to education in their 1948 platforms (Committee, 1985).

As the 1940s drew to a close, Congress entered into a new era of debate on the merits of general federal assistance to elementary and secondary education. While some federal assistance programs were passed, namely the National School Lunch Act of 1946 and the National Defense Education Act

of 1958, all other efforts were unsuccessful. Even with the support of influential Republicans like Senators Robert A. Taft and Wayne Morse, each new effort failed to be enacted by Congress over a two-decade period. The three basic "...obstacles to the passage of an elementary and secondary school aid bill were known collectively at the time as the three Rs—Race, Religion, and (at least in the House of Representatives) Republicans" (Committee, 1985, p. 6); race having to do with how to deal with segregated schools; religion with whether assistance would go to all schools, including religious ones, or only public schools; and Republicans dealing with the House members' fear of federal control of education and excessive spending.

Generally speaking, the private and religious community, led by the USCC, worked to oppose all attempts to provide any kind of general federal assistance to elementary and secondary schools which did not include these schools. At the same time a broad coalition of public school groups and those championing separation of church and state opposed any attempts to include religious schools in such federal programs. In the face of this combination of forces, all attempts to pass such legislation were doomed to defeat (Davis, 1997).

In 1964, the political and historical situation began to change significantly and the scene was set for a major breakthrough in the area of federal aid to elementary and secondary education. First, the Congress passed the Civil Rights Act, thus removing the concerns about segregation in schools. Second, the Johnson landslide election in 1964 produced a radically changed Congress because many conservative Republican members who feared federal control of education were defeated and replaced by Democrats who were committed to passing some form of federal aid to education.

With these two obstacles removed, the remaining hurdle was the inclusion of private, and more specifically religious, schools in any such legislation. While Halperin believed that a public-school-only bill might have passed, he also believed that President Johnson, the consummate deal maker and consensus builder, was not about to reopen "the holy wars on religion" (Committee, 1985, p. 15). Those delegated to develop this legislation were directed to create a general consensus on key issues to make the legislation "...at least minimally acceptable to all major interests, particularly on the church-state question" (Committee, 1985, p. 16).

Francis Keppel, then Commissioner of Education, and his co-workers were able to build support for a bill that was to address a national need being addressed inadequately by the states. To do this he proposed a two-pronged approach to overcome the last hurdle. First, the idea of general aid to elementary and secondary education was abandoned and a form of categorical aid which would provide services to a specified group of people, for example educationally disadvantaged students who resided in areas of high poverty, was adopted. This approach was ultimately labeled the "child benefit" the-

ory. Second, federal funds would flow only to public authorities who were to behave as the accountable trustee for those eligible for services regardless of the school in which they were enrolled; public, private, or religious. This approach was labeled the “public trustee” theory (Monahan, 1987, p. 5).

This approach allowed ESEA to become what Arthur Flemming of the National Council of Churches, a former Secretary of Health, Education, and Welfare in the Eisenhower Administration, called an “instrument of reconciliation, rather than division” (Committee, 1985, p. 17). Archbishop Francis T. Hurley of Anchorage, the former Assistant General Secretary of the National Catholic Welfare Conference (now the USCC) remarked that ESEA was able to reach the President’s desk because of Commissioner Keppel’s “skill and candor” in building a delicate balance that encouraged everyone to be “basically satisfied yet just slightly unhappy and allowing no one to gain a lopsided advantage” (Committee, 1985, p. 39). Hurley also felt that passage of ESEA was successful because people of good will who sought the common goal of serving at-risk school-age children were able to make political compromises without surrendering their basic principles (Committee, 1985).

Even with this compromise in place, the President and the leaders in both the House and Senate realized that the agreement was a very fragile one; so they moved to rush ESEA to passage, taking less than three months to accomplish this major task. Fearing that the compromise might unravel if the bill was given long consideration, the House adopted only a few minor amendments and the Senate adopted no amendments at all (Committee, 1985). ESEA supporters generally took the approach that Congress should “get this enacted, and then we can fix it later” when questions were raised about the specific nature of the programs to be provided (Committee, 1985, p. 56). Jack Jennings, former counsel to the House Education and Labor Committee commented later that “fixing it” and “thinking through” these programs and the funding of them have been the focus of all of the subsequent amendments to ESEA in each reauthorization since 1965 (Committee, 1985, p. 56).

## **REAUTHORIZATIONS: 1966 TO 1994**

The compromise reached in 1965 has been sustained due to a bipartisan base of support for ESEA in the Congress throughout the numerous revisions and extensions over more than 30 years. Thus the “child benefit” and “public trustee” theories have stood the test of time and ESEA has been repeatedly amended to strengthen and expand provisions to protect the right of private and religious school children and staff to receive their fair and equitable share of benefits comparable to services provided to their public school counterparts. ESEA funding has played a major role in the years following the enactment of the statute in 1965. The first appropriation was for \$1.3 billion and appropriations have grown to almost \$13 billion in the current fiscal year.

Numerous amendments have been made to the original ESEA and its five Titles. For example: In 1966, grants for migrant children were added to the original Title I and a new Title VI was created addressing education of children with disabilities. In 1968, Title VI was moved out of ESEA to become a freestanding law (The Education of the Handicapped Act) and Titles addressing bilingual education and special programs were added. In 1970, a bypass for private and religious school children was added to Title III. Language was also added requiring that Title I funds could only supplement, not supplant, local funding. In 1974, the Title I allocation formula was changed and a bypass for private and religious school children was added to Title I. Some small programs were consolidated in Title IV. In 1981, Title I was renamed Chapter 1 and Title II was named Chapter 2, creating a block grant by combining over 20 different programs that were intended to enhance school improvement programs. In 1988, the strength of the bipartisan support for ESEA and the maintenance of equitable services for private and religious school children was clearly evident when Congress added the “capital expense” provision that was aimed at restoring the program participation rates and the quality of services to religious school children after the 1985 Supreme Court decision in *Aguilar v. Felton*. This decision, which did not declare the law unconstitutional, forbade public employees who were providing ESEA Title I services from delivering those services on the premises of religious schools (Davis, 1997). In addition, the Eisenhower Math and Science and Drug-Free Schools provisions were added to ESEA.

In the most recent reauthorization in 1994, both Chapter 1 and Chapter 2 were renamed Titles I and VI respectively. The Clinton Administration had tried to kill the entire Chapter 2 program and shift the funds to a renamed Eisenhower Professional Development program. Opposition to this move came from a broad coalition of public and private school groups as well as the Republicans. In an effort to improve the delivery of services to private and religious school students and staff, the administration sponsored the addition of detailed language on the consultation required between public, private, and religious school representatives in implementing ESEA programs. In addition, a new Title XIV was created containing a “uniform provisions” section covering the participation of private and religious school students and staff in ESEA programs. Efforts were made in 1994 by the administration and Democrats to change the delivery of services from educationally disadvantaged children to poor children. The USCC opposed such a change. As a final compromise, services are still delivered to the educationally disadvantaged, but the process for generating funds for such services was changed. Instead of funds being generated by those who were to receive the services, the new formula had poor children generating the funds. This new process was burdensome to many and created considerable concern in the private and religious school community. As the 1999 reauthorization of

ESEA approaches, the overall effects of this change will need to be studied carefully and possibly revised.

## REAUTHORIZATION IN 1999

In the 1994 midterm election for the 104th Congress, the Republicans stunned all knowledgeable political pundits by gaining 60 seats in the House and 10 in the Senate, establishing majorities in both houses for the first time in 40 years. In subsequent elections in 1996 and 1998, the Republicans continued to control both houses but with a reduced majority in the House and a slightly increased majority in the Senate. The current Republican majorities will allow them to guide the 1999 ESEA reauthorization process through Congress—a reality and a responsibility that they have never had since ESEA became law in 1965.

This new political reality brings us to the point where the potential for some radical revision of ESEA might be considered by Congress. Based on previous Republican education proposals over the last 20 years, it might be assumed that they would consider some form of block granting or consolidation of some or all of the ESEA programs as well as a Title I voucher to be used as an alternative delivery system of services.

Congressional Republicans and Presidents Nixon and Reagan supported some form of block grants in earlier reauthorizations, specifically in 1968, 1974, 1978, and 1981. They were successful only in 1981 when they were able to create the Chapter 2 (currently Title VI) program for school improvement. In the 1988 reauthorization of ESEA, the Reagan administration, in an attempt to overcome the restriction created by the *Aguilar* decision in 1985, made several proposals to create a voucher-based delivery system in Title I. The voucher, which was to be equal to the cost of the Title I services, would have been provided by a public school district to parents of eligible students in religious schools who could then purchase the needed educational services from a variety of providers including the public school, independent providers, or private schools. These proposals were vigorously opposed by the public school lobby and the Democratic leadership in Congress. The final result of this effort was the bipartisan creation of the “capital expense” provision as an alternative solution to the problem (Monahan, 1991, p. 28).

In 1990, the Child Care Development Block Grant Act was passed by Congress and signed into law by President Bush. After a long debate, the Bush administration was successful in its efforts to build a compromise by including a voucher in the final version of this program. Use of the voucher allows parents to obtain child care services from religious as well as non-religious providers (Monahan, 1991). Republicans in the 104th and 105th Congresses have introduced a number of block grant proposals that included parts of ESEA programs, but none of these proposals has become law.

The USCC does not oppose the general concept of block grants and has given support to some of the proposals that have included parts of ESEA. The USCC has regularly supported the continuation of the current Title VI of ESEA as well as increased funding for the program. This support benefits almost all Catholic schools in some way and offers a great deal of flexibility in selecting the programs that best serve the local schools. Therefore, the USCC would be open to considering such block grant proposals. However, the USCC has generally been opposed to block grant proposals that would include the ESEA's Title I program and has joined a coalition of public, private, and religious organizations to oppose any such proposal that may be introduced in the 1999 reauthorization process. It is feared that any Title I block grant proposal may drive the funding away from those students who need it the most.

As always with legislative proposals, "the devil is in the details" and numerous details must be addressed in any block grant proposal. These issues were addressed in some detail in a 1995 internal document: *USCC Analysis—Education Block Grants* (1995b).

First, the proposal must contain explicit statutory language assuring the equitable participation of private and religious school students and staff in any such proposal. There must be specific language that states that this participation cannot be waived by the U.S. Secretary of Education in any attempt to allow for increased program flexibility at the local level. Second, federal funds must be used to benefit students and staff, not institutions. Third, federal funds should not be used to supplant normal funding sources, only to supplement them. Fourth, the proposal needs to include a federal pre-exemption of state laws limiting the participation of private and religiously affiliated school students and staff. This addresses the existence of state "Blaine amendments" which were adopted at the state level after a federal constitutional amendment to bar such assistance to private and religious schools was defeated in the 19th century. And finally, the proposal needs to include provisions to allow for a federal bypass if the state or local officials are unable, unwilling, or fail to provide quality services to private and religious school students and staff.

One additional concern with the concept of block granting is that Congress historically tends to reduce the overall funding levels for such programs once they are enacted. For example, Chapter 2 (Title VI) funding has been reduced over the years since its original adoption in 1981.

The USCC generally supports the concept of providing vouchers and other alternative methods that would allow parents to be better able to provide quality educational opportunities to their children. It has also supported a number of such proposals in the past including the Reagan Administration's 1988 attempt to provide an ESEA Title I voucher. Again, the details of any such proposal will be critical, and the USCC has outlined its concerns in a



1997 internal document: *Programs of Parental Choice in Education*. After considering all of the aspects of the current political reality, the USCC has decided that the enactment of an ESEA Title I voucher proposal is not currently politically viable and will not work for such a proposal in the upcoming reauthorization. This does not, however preclude the USCC from pursuing such a goal in another reauthorization if the political realities change.

## CONCLUSION

If in the 1998 mid-term elections the Republicans had increased their majorities in both houses of Congress, as most people including the Republican leadership expected and as has been the historical precedent for parties not holding the White House, then the implications for the current reauthorization of ESEA may have been significantly different than they are today. The reality is that, while maintaining their majorities in both houses, they made no gains in the Senate and they actually lost seats in the House. This means that almost any defections in the Republican support for these potential proposals might cause the defeat of such proposals.

An additional and very important factor that cannot be ignored in the upcoming reauthorization process is that the current Republican majorities in Congress are counterbalanced by a Democratic President. This President has not been slow to threaten or actually to use his veto power in a variety of policy areas, including education. The President and the U.S. Secretary of Education have clearly voiced their opposition to both the idea of a major block granting of federal education programs and the use of vouchers of any kind. They are supported in this effort by the broad-based public school lobby.

This leads to the conclusion that while block grant proposals may be introduced in Congress, their chances of passage and most importantly their enactment into law are not politically realistic at this time. This is especially true if Title I is included in any block grant proposal. It is doubtful that any Title I voucher proposal, if introduced at all, will be successful for three reasons: 1) the Republican majority in the House is so small that any moderate Republican defections would almost surely kill the proposal; 2) the Senate Republicans may be a little more moderate in education issues than the House and passage would be problematical; and 3) if the President maintains his current position and vetoes such proposals, there simply are not enough votes in the Senate or House to override. This was abundantly clear when the 105th Congress passed a District of Columbia scholarship program and Education A+ Savings Accounts for elementary and secondary education expenses and the Republican leadership in Congress did not even try to override the President's vetoes. Finally, it is clear that the Republicans realize that the President has been able to capture and hold onto the image of being the

“education President” rather than their being perceived as the “education Congress” and thus they have lost political ground on this issue in the eyes of the public. This could cost them dearly in the year 2000 election. Therefore, the leadership in both the House and Senate will want to get the reauthorization process underway and completed with the least amount of unnecessary distractions and contentious disputes and try to build an image that this is a new Congress that works to improve the education of young people, especially those most in need.

The 1999 reauthorization process is unlikely to be the vehicle for any radical change in ESEA. This process may very well focus on refining and clarifying issues and include efforts to improve the quality of programs aimed at helping students meet high academic standards and having teachers better prepared to serve those students most in need. Efforts to improve the accountability and flexibility available in the delivery of such programs will also be incorporated. The USCC will engage in this debate with a series of specific proposals to retain what is included in ESEA regarding the equitable participation of students and staff in religious and private schools. The USCC will press for the inclusion of Catholic school students and staff in a number of programs from which they are currently excluded and where the USCC sees no sound constitutional or educational reason for their exclusion. Proposals to provide more flexibility in the delivery of quality programs and services to Catholic school children and staff will be supported. The USCC will also work to improve the quantity and quality of the consultative process that should lead to improved and increased services to students and staff in religious and private schools and specifically to the inclusion of programs that address the actual needs of families. Finally, the USCC will work to have ESEA funded to the levels necessary to bring services to as many eligible students and staff in Catholic schools as possible.

The USCC has already submitted preliminary ESEA reauthorization suggestions to the U.S. Department of Education. It continues to have discussions with representatives of the appropriate Senate and House committees handling the reauthorization based on USCC’s final detailed suggestions sent to those committees and to the administration. USCC has also given specific testimony in the House on issues related to Title I. This current reauthorization will be an opportunity for a wide public debate on the best future direction of ESEA programs, and the USCC will work to continue to improve the delivery of services to eligible Catholic school students and staff.

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