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HEARINGS

BEFORE THE

COMMITTEE ON

LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

SIDNEY P. MARLAND, JR., OF NEW YORK, (TO BE ASSISTANT
SECRETARY FOR EDUCATION IN THE DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE

SEPTEMBER 20 AND 27, 1972

Printed for the use of the Committee on Labor and Public Welfare



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NOMINATION

WEDNESDAY, SEPTEMBER 20, 1972

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 4232, New Senate Office Building, Hon. Harrison A. Williams, Jr., chairman, presiding.

Present: Senators Williams, Pell, Cranston, Javits, Dominick, and Schweiker.

Also present: Senator Boggs.

Committee staff members present: Stewart E. McClure, staff director; Robert E. Nagle, general counsel; and Roy H. Millenson, minority staff director.

The CHAIRMAN, The Committee on Labor and Public Welfare is meeting this morning to hear testimony on the nomination of Commissioner of Education Sidney P. Marland, Jr., of New York, to be Assistant Secretary of Education in the Department of Health, Education, and Welfare.

STATEMENT OF SIDNEY P. MARLAND, JR., OF NEW YORK, TO BE ASSISTANT SECRETARY FOR EDUCATION IN THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. MARLAND. Thank you very much for this opportunity to appear, Mr. Chairman.

The CHAIRMAN. Commissioner Marland, your biography will be made a part of the record at this point.

(The biography of Commissioner Marland follows:)

BIOGRAPHICAL SKETCH SIDNEY P. MARLAND, JR. U.S. COMMISSIONER OF EDUCATION

Sidney P. Marland, Jr., 58, is the 19th Commissioner in the 105-year history of the U.S. Office of Education.

He was nominated by President Nixon on September 22, 1970, was confirmed by the U.S. Senate on December 10, and was sworn in seven days later.

As U.S. Commissioner of Education, Dr. Marland presides over an organization of 3,000 persons with an annual budget of more than \$5 billion. He is responsible for the administration of more than 100 programs concerned with American education from the preschool to the postdoctoral levels.

Dr. Marland has had more than 20 years experience as a teacher and school administrator with public school systems in Connecticut, Illinois, and Pennsylvania.

Before assuming his duties in Washington, Dr. Marland was president of the Institute for Educational Development (IED), a nonprofit educational research and development organization with headquarters in New York City. He

joined the staff of IED as president in 1968 and took an active part in its programs relating to the reform of inner-city teaching and learning, the changing role of school leadership, and the relationships between the business community and the public schools.

Dr. Marland was born in Danielson, Conn. He received his B.A. and M.A. degrees from the University of Connecticut, in 1936 and 1950, and his Ph. D. from New York University in 1955. He has been awarded honorary degrees by the University of Pittsburgh, New York University, Denison University, and Northwestern University.

Dr. Marland began his career in education as a teacher at William Hall High School in West Hartford, Conn., where he taught English from 1938 to 1941. His military service during World War II spanned the years 1941 to 1947. He served with the U.S. Army as an Infantry Colonel, participating in five campaigns in the Pacific theater, and later was director of research, Pacific Military Intelligence, on the General Staff of the War Department in Washington, D.C. He was awarded the Distinguished Service Cross, the Legion of Merit, and the Bronze Star.

For the next 20 years Dr. Marland was a school administrator, serving as superintendent of schools in Darien, Conn., from 1948 to 1956; in Winnetka, Ill., from 1956 to 1963; and in Pittsburgh, Pa., from 1963 to 1968. During his five-year service in Pittsburgh, he actively participated in the development of many educational innovations at the preprimary, elementary and secondary education levels and in the development of the community college system in Pennsylvania.

At the time of his nomination as Commissioner of Education, he served on the board of directors of National Educational Television, the National Merit Scholarship Corp., and the Joint Council on Economic Education. He has also served on the Presidential Advisory Councils on Education of Disadvantaged Children and the Office of Economic Opportunity. Dr. Marland was chairman of the board of visitors, School of Education, University of Pittsburgh and a member of the visiting committee of the Board of Overseers at Harvard. He also served on the educational advisory committee of the International Business Machines Corporation.

Among his other posts, Dr. Marland served as president of the Research Council of the Great Cities Program for School Improvement; vice-chairman of the White House Conference on Education, 1965; trustee of the University of Pittsburgh and the Community College of Allegheny County; board of directors, Urban League of Pittsburgh; and has been visiting professor or lecturer at Harvard, Northwestern, New York University and the National College of Education, Evanston, Ill.

Dr. Marland is co-author with Carleton W. Washburne, of *Winnetka: The History and Significance of an Educational Experiment* and author of numerous monographs, book contributions and journal articles.

Dr. Marland married Virginia Partridge in 1940. They have three children, Sidney P. III; Pamela (Mrs. Maurice Izard); and Judith.

The CHAIRMAN. Commissioner, do you have a prepared statement?

Mr. MARLAND. I do, Mr. Chairman. I would like to read it. It will be brief.

The CHAIRMAN. We would appreciate it.

Mr. MARLAND. Thank you, Mr. Chairman.

I am honored to appear before you this morning as the President's nominee for the new post of Assistant Secretary for Education.

Since the committee held hearings only 22 months ago on my nomination as Commissioner of Education, I will not repeat the biographical information which I provided at that time, but with your permission will append it to this statement for the record.

Nor will I attempt in this statement to present a detailed account of my stewardship as Commissioner.

I would, however, like to submit for the record the summary of the Office of Education's progress and problems which I prepared for each of my last two Commissioner's annual reports.

What I would like to discuss is the nature of the assistant secretaryship itself, which the members of this committee were so instrumental in creating. I believe that the future will demonstrate your wisdom in taking this highly significant step.

Authorization of this post, to head a new Division of Education within HEW, represents an important elevation of the status of education within the Federal establishment.

In contrast with the post of Assistant Secretary for Education which previously existed as a staff position reporting to the Secretary without statutory authority or program responsibility, the Assistant Secretary will now be the chief line officer responsible for the overall direction of both the Office of Education and of the National Institute of Education.

This is clearly stated in Public Law 92-318, section 402(b) :

The Assistant Secretary shall be the principal officer in the Department to whom the Secretary shall assign responsibility for the direction and supervision of the Education Division.

Thus the Assistant Secretary is responsible for developing and providing overall policy direction for both education agencies.

His office must serve as an essential and effective link between the Office of Education and the research and development activities of the Institute, which must be designed to influence change and reform throughout the system.

Equally important, he must serve as the chief spokesman and advocate for education in the executive branch.

At the same time, it should be clear that the establishment of this new post will not downgrade the authority or importance of the Commissioner of Education or the Director of the National Institute of Education.

The Commissioner will continue to be the Federal official with primary responsibility for the more than 100 programs conducted by the Office of Education—programs which affect the entire educational system of this Nation.

The Director of NIE will have primary responsibility for the conduct of the Institute's developing research program under general policies established by the National Council on Educational Research.

I am grateful for the President's expression of confidence in nominating me for this post.

I look forward to doing my best to organize the new Division of Education so as to provide our schools and colleges with improved and expanded Federal services and resources.

Even more gratifying to me, however, is the legislative expression in Public Law 92-318 that the function of education in our society is of such critical importance as to require a larger and more visible role in the councils of government.

I have high hopes for this new office. I think it comes at a time when leadership is most critically needed to stimulate educational reforms and to advance the national objective of equal educational opportunities and strengthened educational equality for all our citizens.

The Education Amendments of 1972 provide valuable new tools for the exercise of such leadership, and one of the most critical tasks of the Assistant Secretary will be to assure that these authorities are implemented consistently with the intent of the Congress. More broadly, the Assistant Secretary has an enlarged opportunity to exercise leadership throughout the education community.

The concept of career education, for example, extends beyond a single program or group of programs. It is a concept, which, if it is to be meaningful, should pervade the entire educational system. It should encourage the integration of the academic and vocational curriculums in our schools and colleges so that anyone who leaves the classroom for the world of work is prepared for socially useful and personally rewarding employment.

The Assistant Secretary can play a central role in articulating the concept of career education as a major vehicle for educational reform.

Likewise, the goal of equal educational opportunity cannot be accomplished in a single program, but only through a commitment expressed in the many ways that Federal education programs touch the lives of children of all races and abilities throughout the Nation. It should be the task for the Assistant Secretary to affirm and assure this commitment throughout the Education Division.

Educational quality, as well, must not be sought in the research of the National Institute of Education alone. It must be pursued throughout the Education Division, in our evaluation efforts and our program criteria as well as in our strategy for disseminating the findings of NIE. The Assistant Secretary must see that this is done.

In recent years, increasing efforts have been made to hold those responsible for the administration of Federal education programs accountable for their actions. These efforts are beginning to pay off at the Federal, State, and local levels. The leadership of the Assistant Secretary should continue and accelerate this effort.

One of the most exciting challenges for educational leadership lies in developing recommendations to meet President Nixon's pledge to propose more equitable financing of our elementary schools.

Such recommendations are now being prepared under my direction within the Department of HEW.

The Assistant Secretary will have the responsibility for presenting our eventual case to Congress. He will also bear primary responsibility for making existing Federal programs more effective in responding to educational needs at the local level.

We have made proposals for simplifying and consolidating much of the complex structure of Federal legislation at the elementary and secondary level, and we are taking steps to simplify the administration of our programs as far as possible.

I believe that one of the most promising ways to make Federal programs more effective is through encouraging local communities to develop comprehensive plans for focusing all appropriate Federal funds and local resources in a systematic approach to meeting the needs of children in schools enrolling high concentrations of disadvantaged students.

We have proposed that local districts who so desire should have the option of packaging selective Federal discretionary funds for maximum impact, instead of diluting them in the multiplication of categorical programs which require separate guidelines, regulations, and reporting requirements.

We have described this proposal as educational renewal.

While Members of Congress have expressed interest in the idea, they have, as you know, requested that specific legislative authority to the proposal to implement it. We are presently preparing such a

proposal. I hope that the Assistant Secretary will be able to present it to you shortly.

I have attempted to discuss with you in broad terms this morning my conception of the role of the Assistant Secretary for Education and some of the significant programs, concepts, and goals that will engage the attention of the Assistant Secretary, and this committee, in the coming months. I have confidence that working together we can markedly increase the quality of education available to this Nation.

Mr. Chairman, I would like these two documents be made a part of the record. They are:

(1) The Commissioner's annual report, submitted to the Congress by the Commissioner of Education, dated March 31, 1971; and

(2) The Annual Report of the U.S. Commissioner of Education, fiscal year 1971.

The CHAIRMAN. Without objection, these reports will be included in the committee's files on this nomination.

Mr. MARLAND. Mr. Chairman, that concludes my report.

The CHAIRMAN. Thank you very much, Commissioner.

We have many Senators that have come in, and we have time problems.

We will start with Senator Javits.

Senator JAVITS. Mr. Chairman, I would like to ask questions on my own for 5 minutes, and for Senator Kennedy for 5 minutes, since he is held on the floor, I would also like to ask the witness if he could make himself available within the month for real oversight review of the education situation which he administers, as I believe we need it badly.

There are many questions.

Mr. MARLAND. I would welcome such an opportunity, Senator Javits.

I have heard of this process. I have never experienced it directly. While we have had oversight review in the House of Representatives on some narrow targeting of topics, I would welcome an opportunity to take a sweeping review at a number of problems that are very, very grave, in the house of education, and to find ways in which we can go about solving them.

Senator JAVITS. And when you make yourself available, at some odd hour, if you could do that, because we are in great difficulty here as to time. We may want an hour in the night or in the morning, for those who wish to come.

Mr. MARLAND. I am used to working at odd hours, and I will be here at your call.

Senator JAVITS. Under those circumstances, if there are any questions which I have that require extended answers, I can deal with them at that time.

ESEA TITLE I

I would like to ask you, what about title I of ESEA, we hear a lot of rumors, that the money is being misused, that you are auditing here, that you are auditing there.

There is a lot involved, as we hear. Do you want to say anything about that?

Mr. MARLAND. I would be glad to say something, Mr. Chairman, and perhaps I can give you further information at the review or oversight hearings that you propose.

Very briefly, title I was enacted by the Congress in 1965, as a component of the Elementary and Secondary Education Act.

It is the largest single program that the Office of Education administers, something of a billion dollars a year, about \$1.2 billion.

Throughout the period of 1965 to 1969, the States and the school districts began to receive this money with clear directions from Congress and further guidelines and regulations from the Office of Education, which in many instances were administered very swiftly. Money was delivered very hastily, and errors were made.

The auditors over the years have uncovered evidence showing errors in judgment in the expenditures of those dollars, as contrasted with the conditions which Congress imposed upon them.

We have, therefore, in virtually every State found errors through audit, and in no instance at all, found fraud.

The errors totaled something less than 1 percent of the total dollars distributed, but nonetheless they are errors, and in the scale of dollars, they are very substantial sums.

It is quite possible between \$25 and \$35 million throughout the United States will be found in error as to these audits.

We are now in the process of notifying all States of the degree of their error.

In some cases, it is quite small, less than half a million dollars, and in some cases, it is quite large, over \$5 or \$6 million.

We are in the process of negotiating with each of those States, and here I am predicting, not reporting, predicting hopefully that we can work out with the General Accounting Office a system that will not require the reimbursement of the Federal Treasury for these funds, and, therefore, take funds away from children, especially needy children for whom title I is intended. We do hope to have a reconciliation of the auditing process, so that we can offset the number of dollars, those dollars which were erroneously expended during that 5-year period.

I cannot say that that will be our solution. We are negotiating, and we hope to be able to bring that off.

Senator JAVITS. And you will report to us as to what is the solution?

Mr. MARLAND. At the time we complete it, I can give you more details.

Senator JAVITS. When you come to your solution, advise us, please, of what your solution is.

Mr. MARLAND. I will be pleased to do that.

Senator JAVITS. I ask unanimous consent that that be put in the record.

Mr. Chairman, I feel it is important that that be made a part of our record.

The CHAIRMAN. Without objection, so ordered.

(The following information was subsequently supplied:)

At the time the hearings went to press, no decision had been reached by the Department of Health, Education, and Welfare concerning procedures for responding to Title I audit exceptions.

The CHAIRMAN. Do you have anything further, Senator Javits?

Senator JAVITS. Yes, Mr. Chairman.

Now, Mr. Commissioner, I will put a number of questions in the record, which I want your written answers to, so that we may follow that up.

(The following was subsequently supplied for the record:)

1. (a) What is being done with respect to solving the unique educational problems of large urban communities?

(b) In particular, what is being done in this regard with respect to the Nation's largest local educational agency, New York City?

2. What are your plans with respect to education of the gifted and the talented?

3. As you know, my colleagues and I from Eastern states have for some time been interested in the allocation of resources for bilingual education programs. Could you elucidate on this, with especial reference to the status of programs for Spanish-speaking individuals of Puerto Rican descent, and what proportion of programs are being directed toward them?

4. Could you describe how cooperation is being effected with State education agencies and what is planned in the area of Federal-State relations?

5. What is being done to carry out the provisions of the recent-enacted Emergency School Aid Act?

6. What is the Administration's position on the House-passed busing bill?

7. What is being done in respect to assistance for busing for racial balance and for desegregation.

Senator JAVITS. It is important that we have those questions and answers in the record, especially since we are under the promise of the leadership that the busing question is ready to go to the Senate; it is ready to be called up at anytime.

(The responses subsequently supplied for the record appear on p. 85.)

Senator JAVITS. Frankly, we have not heard from the administration on the House passed bill, as I understand it.

Commissioner Marland, we would appreciate a real forthright statement.

Now, the President, we were told, is for this antibusing bill. I am against it, and many here are against it, but we are entitled to know from the professionals what the facts are, and so if you make that the first thing you answer, within the nearest number of days possible, it would be very helpful to us.

Mr. MARLAND. I understand, sir.

I might add a footnote to that reply. It may not be within my jurisdiction to answer your last question—what is the administration's position on the House-passed bill called the Equal Educational Opportunities Act.

The answer that I will give you will be of those questions within my jurisdiction, but the latter question, I cannot speak for the administration until they have taken a position.

Senator JAVITS. I am not asking you to give us an opinion.

I am asking you to give us the facts. What are you doing about racial balance, if anything?

What are you doing about segregation, especially since we have given you a new law?

Now, for Senator Kennedy, he has two sets of questions, one of which relate to the supplementary appropriations to fund the basic opportunity grant program. Those I ask you to answer in writing, and we will hand them to you, and I ask unanimous consent the questions and answers be included in the record.

The CHAIRMAN. Without objection, so ordered.

(The questions referred to follow :)

(1) In my letter to you I asked whether you had made recommendations to OMB for supplementary appropriations to fund the basic opportunity grant program. In your response, you say that the recommendations of OMB are not yet available. What were your recommendations to OMB for funding the program.

(2) You state in your letter that full funding costs range from \$500 million to \$1 billion and would cover 1.5 to 2.5 million students. What was your recommendation, to cover the higher number of students or the lower number of students?

(3) With regard to bilingual education, as you know the Senate added some \$20 million to the administration request raising the approved level to \$60 million. Do you believe that is sufficient to meet the needs of the limited English speaking children in this land?

Is it the policy of the Office of Education to provide bilingual programs, including the teaching of academic subjects in the native language of the students, to all schools with a population concentration of 5 percent or more of limited English-speaking students?

If it is then what is your estimate of the Federal cost of that program?

(4) Why has there not been a program-wide evaluation of the bilingual education program? Why can you not identify the funds or even the hours that are involved in bilingual as opposed to merely teaching English? Would you revise your project application forms to identify the amount of classroom time spent on the various components of the bilingual program?

(5) In my letter to you, I requested information regarding the proper scope of the right to read program in the next several years. What is your view of the relationship between what is now the Federal role, a program of approximately \$10 million a year and the program three years from now?

(The answers to the above questions follow :)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE ASSISTANT SECRETARY FOR EDUCATION
WASHINGTON, D.C. 20202

Honorable Edward M. Kennedy
United States Senate
Washington, D.C.

Dear Senator Kennedy:

Thank you for your letter of December 13 transmitting questions which you intended that I be asked as part of the hearings concerning my nomination to the position of Assistant Secretary for Education in the Department of Health, Education, and Welfare. I regret the mix-up which precluded my answering them at an earlier date.

Question 1. In my letter to you I asked whether you had made recommendations to OMB for supplementary appropriations to fund the Basic Opportunity Grant program. In your response, you say that the recommendations of OMB are not yet available. What were your recommendations to OMB for funding the program?

The Office of Education prepared several alternative levels of funding for the Basic Opportunity Grant program, at the specific request of the Office of Management and Budget. These alternatives reflected the Office's best estimates at that time for full funding costs of the program, as well as alternative funding levels. OMB is currently considering each of these alternatives carefully. No final funding decisions have yet been reached for the Basic Grant program; discussions are currently taking place between the Department and OMB regarding funding plans. The final recommendation of the Office of Management and Budget will be made very soon, in preparation for the supplemental budget submission to Congress early in January.

Question 2. You state in your letter that full funding costs range from \$500 million to \$1 billion and would cover 1.5 to 2.5 million students. What was your recommendation, to cover the higher number of students or the lower number of students?

The number of students receiving Basic Grants would not change with variations in program funding levels, except in extreme cases. If funding for the program is less than full cost, the same number of students receive grants of smaller amounts. Only if funding for the program were less than fifty percent of the pro rata reduction schedule would the number of students receiving grants be reduced. These would be students who would be eligible only for grants of less than \$50.

Page 2 - Honorable Edward M. Kennedy

Question 3. With regard to Bilingual Education, as you know the Senate added some \$20 million to the Administration request raising the approved level to \$60 million. Do you believe that is sufficient to meet the needs of the limited English-speaking children in this land? Is it the policy of the Office of Education to provide bilingual programs, including the teaching of academic subjects in the native language of the students, to all schools with a population concentration of 5 percent or more of limited English-speaking students? If it is then what is your estimate of the Federal cost of that program?

The purpose of the Bilingual Education program, as indicated by its legislative history, is not the provision of basic educational services to all bilingual children in the country. Its thrust is the development of new methods and pilot programs for the education of such children. In our justifications for appropriation estimates for Fiscal Year 1973 for Bilingual Education, it was estimated that \$41,130,000 would be the justifiable funding level for Title VII. The \$41,130,000 justification would serve approximately 123,000 students. Our best estimate of children in need of bilingual/bicultural education in this country is five million. Under the legislative provisions requiring integrated instruction, a total population of eight million children would have to be served. The inclusion of the \$20 million additional funds added by the Senate to the Administration's request would not meet the needs of the total eligible students. The Division of Bilingual Education estimates that it would take approximately \$4 billion to meet the needs of the total number of students in need of such instruction.

It is the policy of the Office of Education to include academic subjects utilizing the language of a non-English dominant student as a medium of instruction, while at the same time utilizing English also as a medium of instruction. The Office does not permit the utilization of Title VII funds for activities limited to the language arts.

Question 4. Why has there not been a program-wide evaluation of the Bilingual Education program? Why can you not identify the funds or even the hours that are involved in Bilingual as opposed to merely teaching English? Would you revise your project application forms to identify the amount of classroom time spent on the various components of the Bilingual program?

During the past year the Office of Education has been formulating plans for an evaluation of the Bilingual Education program. The evaluation contract was awarded last spring to Development Associates, Inc., a minority-owned firm. This firm has developed data-collection forms and is now preparing to visit project sites. The purpose of this evaluation is to describe a sample of Title VII projects. As part of the evaluation, the amount of time spent learning English and learning the other language will be determined as well as the amount of time English and the other language are used to teach particular subjects. A report from this evaluation should be available in the fall of 1973.

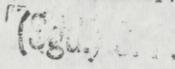
Page 3 - Honorable Edward M. Kennedy

Question 5. In my letter to you, I requested information regarding the proper scope of the Right to Read program in the next several years. What is your view of the relationship between what is now the Federal role, a program of approximately \$10 million a year and the program three years from now?

The Office of Education's five year plan for Right to Read includes an expansion for Fiscal Year 1974 for the development of demonstration models in reading, pre-school through adult education. In three years hence, the program is projected to increase. However, Right to Read, as a concept, embraces the notion of coordinating all reading and reading-related activities in the Office of Education in order to have a total impact on this national goal. The current estimate is that \$462 million is being expended on reading under various Office of Education program authorities which are influenced by the Right to Read effort.

I hope that these answers to your questions have been responsive to your interests. If you have any further questions, please let me know.

Sincerely,


S. P. Marland, Jr.
Assistant Secretary
for Education

Senator JAVITS. The main question, Indian education, and he has your letter of September 15, which is before me.

He said, and I will read the letter, and submit it for the record.

(The letter referred to follows:)

HARRISON A. WILLIAMS, JR., N.J., CHAIRMAN
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United States Senate

COMMITTEE ON
 LABOR AND PUBLIC WELFARE
 WASHINGTON, D.C. 20510

STEWART E. MCCLURE, STAFF DIRECTOR
 ROBERT E. NAGLE, GENERAL COUNSEL

August 17, 1972

The Honorable Sidney P. Marland, Jr.
 Commissioner of Education
 400 Maryland Avenue Southwest
 Washington, D. C. 20202

Dear Commissioner:

During your confirmation hearings, I think it would be extremely helpful to be able to discuss with you some of the current policies of the Office of Education.

As you remember, on July 19, we discussed in my office OE efforts towards implementation of Title IV of the new education legislation, relating to programs for American Indians. You indicated that by July 30 an implementation plan would be developed, and that the Office intended to move forward promptly with its efforts in this area. We are now well into August, and I understand that no formal or public action has yet been taken toward implementation, involving solicitation of Indian nominees for the National Board, establishment of a time schedule, drafting of guidelines and projection of budgetary needs.

I would hope that as much information as you now have developed could be made available to me prior to the hearing.

Also, I would appreciate receiving some indication of the current state of planning on the matter of the basic educational opportunity grant program contained in the Higher Education Act.

Clearly, this program represented the greatest break with the past in its effort to insure that no qualified student would be denied an opportunity for higher education as a result of lack of funds.

Page 2
The Honorable Sidney P. Marland, Jr.
August 17, 1972

I know of your interest in this matter and I would appreciate learning your analysis of the number of students who would be eligible for such grants this year, the amounts of grants they would be eligible for, and the total cost of that program. In that regard, I would appreciate knowing what recommendations have been made to the Office of Management and Budget for supplementary appropriations request.

In another area of concern, I would appreciate knowing what plans you have for the expansions of the bilingual education program. I am particularly interested in knowing what recent evaluations of this program have shown.

Also, I would appreciate your evaluation of the progress of the Right to Read program and your view as to the proper scope of this program for the next several years.

Again, I appreciate your help in these matters and look forward to receiving this information prior to the hearings on your nomination.

Sincerely,

Edward M. Kennedy



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF EDUCATION

WASHINGTON, D. C. 20202

SEP 15 1972

Honorable Edward M. Kennedy
 United States Senate
 Washington, D.C.

Dear Senator Kennedy:

I am pleased to respond to your letter of August 17 concerning implementation of various aspects of the Education Amendments of 1972 (P.L. 92-318) and progress under the Bilingual Education and Right to Read programs.

The Office of Education's efforts concerning implementation of Title IV of P.L. 92-318 (the Indian Education Act) are proceeding according to schedule. The process for receiving nominations from the Indian community has begun with an August 25 mailing to Indian tribes and organizations throughout the country. I have suggested in that communication that all nominations be submitted to the Office by September 25, 1972.

After these nominations are received, I will place my recommendations in channels for ultimate consideration by the White House. It is our goal to have the President name the Council members this fall. After the Council has been named, the other implementation steps--the selection of a Deputy Commissioner for Indian Education and the organization of a Bureau of Indian Education--will quickly follow.

The Office of American Indian Affairs is proceeding with all the necessary paper work to insure that guidelines and regulations will be available for consideration by the Council at the time it is convened. You may be sure that we will be consulting with various Indian tribes and organizations as this work proceeds.

Regarding planning for the Basic Opportunity Grants, the Task Force on Student Assistance is in the process of clearly defining the critical issues and alternatives which we face in implementing this very important program. Some of the issues under consideration include the establishment of an equitable and efficient needs analysis system, the establishment of a family contribution schedule, an open and workable appeals mechanism and a process for distribution of awards to the students.

While the recommendations of OMB for supplementary appropriations are not yet available, preliminary analysis indicates that full funding costs for 1973-74 would range from \$500,000,000 to over \$1,000,000,000, and that between 1.5 and 2.5 million students would receive assistance under the Basic Opportunity Grants Program. The exact number of students aided and funding level would depend on the family contribution schedule used.

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Relative to your interest in Bilingual Education, it should be noted that a FY 1973 budget request for \$41,130,000 for the support of bilingual education programs under Title VII is pending in the Congress. This figure represents a \$6 million increase over the amount appropriated in FY 1972. A portion of the money will be directed toward the expansion of bilingual education services in the 213 currently funded projects. Residual funds will be utilized for the support of approximately 30 new projects serving children with limited English-speaking ability in school districts that have, to date, received minimal or no Title VII assistance.

In connection with your inquiry regarding recent evaluations of this program, we are not able to offer program-wide evaluation data at the present time. In addition to the wide range of objectives being tested and the variety of instruments employed by projects, a number of instruments are in the developmental stages and the validity of the data collected is therefore uncertain. As program planners experiment one year with traditional measures of educational achievement and find them unsatisfactory, they discard them and select other test measures for the following year. In a number of cases, project planners have also turned to the development of criterion-referenced rather than norm-referenced tests to be used in conjunction with specific curriculum materials.

A number of individual project evaluations have, however, provided us with information which suggests the positive impact of bilingual education approaches. Children's academic achievement, feelings of self-worth and cultural pride, attendance patterns and motivation to stay in school are among those areas in which dramatic improvements have been cited. We would be happy to furnish more specific information about such projects if you are interested.

Additionally, during the current school year we are also undertaking, through the Office of Program Planning and Evaluation, an assessment of the bilingual education practices employed by all Title VII-supported projects in order to determine their various strengths and weaknesses.

The Right to Read program has been operational for approximately one year. The awards of the first grants to 68 school-based Right to Read sites were made in January 1972. With a budget of \$10 million, Right to Read has now funded approximately 204 school- and community-based demonstration reading sites throughout the country. It has also made grants to eleven States which have been declared Right to Read States. With technical and financial assistance provided by Right to Read, it is anticipated that these sites and States will serve as prototypes for possible replication.

The Right to Read program is in the continuous process of identifying exemplary programs and teaching practices, with a view to demonstrating and disseminating them throughout the country. To date, five model programs have been validated

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and Right to Read anticipates moving to twenty-five by 1978. This will provide the programmatic heterogeneity necessary for serving both the widely varied cultural milieux of the functional illiterates among our adult population and our school age children with reading problems.

The problem of coordination at the Federal level is crucial. With the millions of dollars presently being spent for reading in various Federal programs, I have asked that the Right to Read office take the leadership in bringing these programs together in a concerted attack on illiteracy. Several task force teams have been organized representing the various programs to plan and implement a coordinated program. An advisory committee composed of the Associate Commissioners responsible for each of the programs has been organized to provide the necessary support for the task force teams and the total Right to Read effort.

While these efforts are viewed by Right to Read as only "yeast" in the total national effort to combat illiteracy, they are a good beginning. Word about the success of the Right to Read program is spreading. State and local education agencies are learning about Right to Read's assessment and planning procedures, exemplary programs, practices and materials. These are being adapted and adopted by many schools and educational agencies on their own, without Federal money. This is as it should be, since most of the money for teaching reading is at the State and local level.

Our future plans call for extended efforts of Right to Read to identify and develop projects and materials essential for good planning and implementation of reading programs. A special target of the Right to Read effort over the next few years will be schools of education which need to devote greater emphasis to the art of teaching teachers to teach reading.

And finally, we will continue to press for more substantial involvement of the private sector in the National Right to Read Effort.

I hope that this information helps to clarify our position on the several points of interest which you have specified.

With best regards,

Sincerely,


S. P. Marland, Jr.
U.S. Commissioner
of Education

Senator JAVITS. Now, is that still your deadline, November 6, as the date targeted for selection and appointment of the members of the National Advisory Council on Indian Education?

Mr. MARLAND. It is, and I will amplify that in this way.

The law requires that the Commissioner of Education secure nominations from the entire Indian population for the selection of their education council.

We have, therefore, communicated with over 400 tribes and councils throughout the United States to secure their suggestions.

As the law is read by our General Counsel, we may not establish this program until we have the Council in place, because that Council must provide the nominating slate for the person who shall in the statute be named Deputy Commissioner of Education for Indian Education, so that is the sequence that must follow.

Our deadline for replies from the Indian community is September 25, and that letter went out in August.

By September 25 we will have their nominations. It will take 2 or 3 weeks I suspect to digest them into a slate to present to the White House, and I think our November 5 date is still secure, sir.

Senator JAVITS. Now, the next question, your plan also projected next January as the date for having everything in the Office of Education in order for administering new Indian education programs established by the new law.

Is this still a reliable projection?

Mr. MARLAND. This is probably a very close target, and a narrow margin to develop a Council by November and have a program in effect in January.

I would have to say we have to work very fast in order to accomplish that.

I might say we have anticipated some of the work of this Council by preparing alternate plans for them to review the minute they come on board so as to expedite that process.

We have named an acting planner to be a party to the total Indian Education Council, an Indian himself, a scholar, a school administrator, and he is now on board working on the planning, so that in anticipation of that Council being present, we will have alternate plans present, that we will present to them.

Senator JAVITS. What is his name?

Mr. MARLAND. His name is Bill Deemer, a graduate from the Harvard School of Education.

Senator JAVITS. The next two questions, HEW did not request any new funds for this fiscal year for implementation of title IV. Do you expect to seek a supplemental appropriation before January so that the funds will be there when the office is set up and ready to administer?

Mr. MARLAND. At this time we have been able to identify about \$81 million of money now in hand.

The target, that which is capable of being targeted on Indian children, and with much more discipline within the system than now prevails, one of the tasks of the new Deputy for Indian Education will be to see to it that the appropriate moneys to get to Indian boys and girls is appropriated. I think there is a great deal of room for that to be improved.

As for new money, at this time, I cannot predict that.

In the first place, we ought to be using what money we have well.

Senator JAVITS. So you are not seeking new money for the program yet?

Mr. MARLAND. Our supplemental budget is not yet fixed, and it would be premature to guess at that.

In the next 6 months there will be intensive planning, supervision, and technical assistance to get the moneys we now have to the Indian students at all levels, including community colleges and colleges.

We often think as Indian programs being secondary and elementary. It must not be, especially in terms of career opportunities for young people.

Senator JAVITS. Senator Kennedy's last question, title IV also calls for requiring local involvement in funding under Public Law 874—impact area funds—connected Indian enrollment. This requires no new funds.

Have your regulations to enforce this provision been written yet? When will they become effective?

Mr. MARLAND. That will be typical of the kind of planning going on under Bill Demmert to assure dollars in hand are properly directed under Public Law 874. That should be happening by late winter or early springtime.

Senator JAVITS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Pell.

Senator PELL. Thank you, Mr. Chairman.

The question of legislative intent, and how to get it followed is a frustrating one. We in the Congress only have two powers over the executive branch. One is the power of the purse, and the other is the power of confirmation.

What is frustrating to me as one Member of Congress is to make these authorizations, to make the policy, and then to see the executive branch not carry that policy out. The individual concerned has already been confirmed, and the administration can "thumb its nose" at us.

A good example of what I am driving at, one which has frustrated me continuously, has to do with the Council on Quality of Education, which Senator Cooper and I worked on a good many years, which was enacted into law, in 1970 in Public Law 91-230 and which has never been implemented. The Commissioner and I have talked about this.

He pointed out to me that there are many different councils, but it is still the will of the Congress, and I am wondering what you recommend to us to insure that the will of the Congress is carried out.

Should I try to block your nomination? I do not want to do that, but I really want to see those things authorized by law carried out, and they are not being carried out.

Mr. MARLAND. I respect your position greatly, Senator, and I would like to address the first part of the generalizations you described; namely, your frustration, and I would share mine, at the apparent disregard for law in this part of the executive branch, and what we are doing about it.

We are concerned about this, and concerned about some perception in Congress that we are unmindful of the law, and I would respond with perhaps rhetoric, and say we have respect for what the law is, and I would rather quote from a directive we issued last May to our staff, to

our entire staff, with a desk-to-desk delivery, with the paychecks at the end of May, shortly following the conference committee's report, and I said this, and I will submit this for the record.

(The information referred to follows:)

The Commissioner's Letter

Vol. II, No. 5

May, 1972

A letter from Commissioner Marland to the employees of the Office of Education

Dear Co-worker in OE:

We completed on May 12 the first round of open meetings with the several deputyships. These events have been extremely useful to me in finding a way to hear individual staff members express their concerns and recommendations. I know the meetings have been rewarding to the deputies, for they have led to prompt corrective measures wherever feasible solutions could be found to issues raised at the meetings. It looks as though we can continue these meetings periodically, if interest on the part of OE personnel continues to warrant them.

This being Wednesday, May 17, as I write this letter, a major event in the life of the Office of Education occurred about 5:10 this morning. The Conference Committee on the Higher Education bill, with all of its many amendments affecting virtually every part of the Office, concluded its work and sent the bill to the two Houses for early consideration. While it is premature to judge the total impact of this new legislation, it is clear that it contains important and far-reaching provisions for education at all levels. However, one of the underlying messages of the Conference Committee's work, which I have found very disturbing, is the belief among many members of Congress, especially in the Education Committees, that the Office of Education has not responded sincerely and straightforwardly to the intentions that Congress has laid down in laws affecting our programs. We can argue as to whether or not this is true, or whether Congress has mistaken our honest initiatives for efforts to evade Congressional intent, but such arguments are not appropriate in my judgment. If Congress believes that we have been guilty of departing from its intentions, then, indeed, that is the issue, and we must exert all possible means to correct this feeling. I am told that the distrust reaches back over previous Administrations and is not confined solely to the present period. This, however, in no way relieves us at this time from our obligation to correct the condition. Personally, I am not able to work effectively in the responsibilities which I carry if there is a spirit of distrust, deserved or not, in any part of the system in which I must operate. Therefore, I am planning to take very positive measures to endeavor to establish a condition of credibility with the key people in Congress on the subject of how faithfully we do carry out their intentions. I am also asking that we work out a procedure for program officers at all levels to do the same. While it is undoubtedly true that there should always be a condition of appropriate creative tension of a positive nature between Congress and the Executive arm, irrespective of political lines, I feel that the degree of our present friction is negative in nature and goes beyond the normal and expected checks and balances so necessary in our form of Government.

To a large degree I feel that the difficulties surrounding our progress toward Renewal as a high priority of this Office have derived from this general spirit of suspicion toward us from some individuals in Congress. It will probably be necessary for us to defer any substantial initiatives

in the Renewal Site concept either until we have new and specific legislation, or until we can make it clear that all of the initiatives we had planned under Renewal are actually permissible under existing authorities and that they do reflect the intent of the Congress. (Other aspects of the Deputy Commissioner for Renewal do not need new authorization, namely Statistics, Technology, Communication, Teacher Corps, Drug Education, Health and Nutrition, Environmental Education and the on-going programs of NCIES.) I think we would be making a mistake, even though we have the authority to push ahead in this very important arena, if we were to be viewed as consciously defying the concerned members of Congress. I shall be working hard with them to attempt to make clear that we do not intend any departures from law and that to carry out the ultimate goals of Congress, especially in the direction of educationally disadvantaged children, there is much that is promising and wholly correct legally in our Renewal Site design.

On an entirely different subject, I am distressed over the conditions of housekeeping in a number of our work areas. I have had thoughtful and sometimes painful letters from employees who have called attention to conditions of uncleanliness and disorder. Some of the fault lies, I believe, in the custodial services which are afforded us, and some of the fault lies, I believe, in the self-discipline and standards under which some thoughtless employees contribute to the disarray. I am asking that two measures be taken immediately to correct this condition:

1. We are increasing by contract our custodial services in ROB-3 to improve conditions in washrooms and in general cleaning.
2. I am asking all Bureau Chiefs to make periodic inspections of their quarters for the removal of trash, the disposal of unnecessary accumulations of materials and the facilitating of moving to storage such items as extra desks, cabinets and other gear which clutter corridors and work areas.

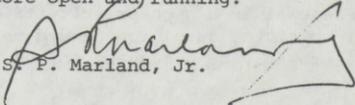
Nonetheless these measures will not be meaningful unless all individuals take pains to increase their own pride in their work area. I am conscious of the unsatisfactory facilities in which many of us must operate, and you know that we are addressing long-term solutions to these needs, but I ask that we make the best of our present circumstances in the meantime.

QUOTE OF THE MONTH -- From a letter recently addressed to me ...

"Dear Mr. Commissioner: ...Would you call the attention of our Bureau Chiefs, our Division Directors, and our Branch Chiefs to the mounds of debris in the hallways; the trays irresponsibly removed from the cafeteria and thoughtlessly discarded in the walkways; leftover food and beverages idly tossed aside to attract roaches and create stench; ...Please, Mr. Commissioner, ask our leaders to investigate the source of this trashiness and put a stop to it....please help us!"

MRS. IRENE K. TEATES

Summer is almost upon us. I urge all supervisors to begin to plan now to insure that all individuals will have timely vacations. We have a tough year ahead of us to do all that we must do. I greatly respect the extra devotion and the many uncounted extra hours that are being put to the work of the Office, but we all need the refreshment of a change of pace and now is a good time to plan vacation time compatibly with others, so that we can keep the store open and running.


S. P. Marland, Jr.

Mr. MARLAND. That is what I believe, Mr. Chairman, what is in that memorandum.

As for the specific question you raised, you are quite right in saying we probably have many more advisory councils and commissions than we would like, and more than are really warranted. But in one way or another, they are there.

We hope to reduce the numbers and consolidate them. We are going through a major process to do just that.

At this time on the subject of the particular Commission which you have cited, the overall Education Commission, the Office of Management and Budget has declared a review of all such programs with a view to setting up new ground rules, new implementing procedures and standards. Until such time as they authorize the process of that, realizing it is a White House appointment, not one under my direction, I think that my position is only one of biding my time until the President names that Council.

Senator PELL. Well, I admire the rhetoric and good will you express, but the frustration is that the law says that there is hereby established a National Council on Quality Education, and so on.

There it is. It was passed in 1970. It is the will of the Congress. It is not up to the OMB to determine or up to you to determine whether it is good or bad. We pass the law. You are part of the executive branch, and you specifically are the executive officer to carry out the will of the board of directors of the United States, which is the Congress, not the President. The only opportunity to assert our will is to block confirmations or to block money, and those are both negative approaches.

As you know, I am normally very mild, but this really frustrates me, upsets me, for I am the chairman of the subcommittee that has oversight over you and your office.

We talked about this, and I see absolutely no motion on your part. That is point 1.

Point 2, do you intend to set this Council up or not?

Mr. MARLAND. As a responsible officer as Commissioner of Education, I will attempt to abide by this law.

I have to say again, sir, that this is a White House nomination. It is a matter of a Presidential commission, and the processes of the Office of Management and Budget at this time seem to have intervened in the processing of this law, in naming such people.

It is at this moment not a function of the Commissioner to name that panel.

Senator PELL. I realize that. But must I resort to the only leverage we have, which is surely negative, and not constructive. Must we cut money off or not confirm nominations?

The Education Amendments of 1972, were passed in June, we have yet to see the budget figures on these higher education programs. Why is there such a delay in submitting these budget figures?

Mr. MARLAND. The budget figures I hope will be before the Appropriations Committee next week.

We have had to undertake extensive debate, within the HEW protocols with the OMB protocols, with national policy.

The very large new sums that were authorized by this legislation have been found very difficult for the administration to face in terms of its economic problems.

We are negotiating from hour to hour, and this is at this very moment, including last night, Senator Pell, with the hope that we will have a budget document before Congress next week.

Senator PELL. I understand that some of your task forces have been working on the implementation of these amendments. Specifically with regard to the basic education opportunity grants, I understand that there has been thought given to the idea of setting up regional panels for school by school allocations; is that correct, or is that false?

Mr. MARLAND. There is a task force working on this subject, and among the various options they are weighing is how best to allocate moneys geographically nationally.

It has been our practice to use regional panels of experts to determine appropriate deployment of such funds.

Now, I have not at this date learned whether that is to be done, whether that is to be one of the decisions.

In fact, it is not yet a decision. It is one of the procedures being weighed among many options.

Senator PELL. If the procedure were attempted, may I say, it would be in direct violation of the will of the Congress.

The purpose of these grants is that they should be equal across the board and awarded to students as a matter of right.

This is one more example where the executive branch is changing the will of the Congress. Having sat in that conference and been the initial author of that legislation, I think I know the intent, and it would be a violation of the intent, if you went ahead with that type of procedure.

Mr. MARLAND. Let me insert there, Senator Pell, an important point.

I think we have made it clear to both of the committees, the House and the Senate, that as we get to something that is a tangible format, where we have perceived the law, knowing that there may be differences, it is our plan—in fact we have already put this plan into motion—to have our staff, including the task force personnel, sit down with staff in Congress before we get into any kind of regulation writing or guideline writing, and to be sure we are on the same wavelength.

Senator PELL. To save you the time of checking with staff, that is not the intent of the Congress as you described it, and you need not have a meeting as far as we are concerned in that regard.

Mr. MARLAND. Very good.

Thank you, sir.

Senator PELL. You mentioned earlier the administration is having problems finding the money for these educational programs. Yet it is not considered inflationary by the administration to suggest raises in defense, in the defense budget by \$4 billion for military assistance, and so forth. Do you yourself agree with the President, in the present system of priorities, in the veto of the recent educational appropriations bill.

Are you willing to take a position on that?

Mr. MARLAND. If I cannot agree with the President, I should not be in my role at any time. I am prepared to support the President's position vis-a-vis the large expenditures called for beyond what was found to be feasible in this administration in this year. Much as I regret to say, and much as I have devoted most of my life to increasing the resources for education, the President's position—which was not so much directed at the education budget, but at the total HEW budget, some of which had some open ended appropriations, which were grotesquely inflationary—was taken in good faith and responsibility.

If our education budget had been treated wholly separately, I am not here to predict or declare that the President would not have vetoed it.

It was up by about \$800 million above his budget figure, but I think it would not have been merely some danger from the education budget but it was the matter of the whole package that he felt he had to veto it.

Senator PELL. Is it your recommendation in connection with the basic education opportunity grants, that program be fully funded?

Mr. MARLAND. Fully funded?

Senator PELL. That is a grant to be awarded up to \$1,400.

Mr. MARLAND. I cannot tell you offhand with what the total dollar funding would be, if there is an authorization level.

Do you know the figure?

Senator PELL. I think it would be about \$900 million roughly.

It is just a shade under a billion dollars for the first year.

Mr. MARLAND. We would probably have to be short of that this year.

I will struggle very hard, as the advocate for education, to press for the full amount the Basic Opportunity Grant program calls for.

I happen to believe it is a splendid program. I know you had a very large hand in its architecture, and I would like to help bring about its success.

Senator PELL. Will there be some funding in there?

Mr. MARLAND. To the best of my knowledge, there will be some significant funding. It is a good program. The basic opportunity grant is a very good program.

Senator PELL. Now, I would also point out here that one of the bills the President vetoed was a pure educational bill, so it is not only when it is imbedded in other matters that he vetoes them.

He has in the last 3½ years vetoed one pure educational bill.

Mr. MARLAND. A year ago he quickly approved the appropriations bill, and I was able to deliver moneys to the schools promptly at the opening of school a year ago.

Unfortunately that condition does not prevail today. Conditions were not as extreme last year in terms of a departure from the President's budget by the appropriation actions.

Senator PELL. There are three more questions that I have, and I want the permission of the chairman to submit some more in writing.

The CHAIRMAN. Fine.

Senator PELL. In connection with this general funding, we have the question of impacted aid. Several of us here are particularly concerned for it is vital to our schools.

Will there be full funding in the recommendations coming up?

Mr. MARLAND. I cannot guarantee the level of funding for the impact aid, but it is now in the budget at about the level of last year.

Senator PELL. Secondly in connection with the guarantee student loan programs, and I recognize that in the late hours of the night, or early hours of the morning, when the air conditioning had been turned off for 6 hours, the conference language got a little foggy, nevertheless, it was the legislative intent of the committee, that that \$15,000 limitation was not meant to be interpreted tightly the way it was to require needs test.

The administration sought to interpret it tightly. I was curious as to your own role in regard to the promulgation of regulations that brought this about.

Did you write the regulations, or were they written in the White House?

Mr. MARLAND. The regulations were written by HEW.

This is largely the General Counsel's interpretation of law.

The General Counsel of HEW writes the regulations.

Senator PELL. The General Counsel?

Mr. MARLAND. Yes, sir.

Senator PELL. He takes those interpretations and transforms them into regulations?

Mr. MARLAND. Yes, sir.

Senator PELL. I see.

Mr. MARLAND. That was in this instance, Senator Pell, where if we had enough time between our staffs and those of the committee; I think we could have ironed out what the Congress intended. We could have reconciled the very real differences from what our general counsel found to that which many Senators and Congressmen felt had passed.

In other words, it was law that required for all young people participation as assessment of family income.

Now, what we are now doing in the light of the recess that we have had on this, delaying the implementation of the legislation until next March, is to use this time fruitfully, to iron out those differences, and there are basic legal differences, to correct them.

Senator PELL. I realize this, but nevertheless starting in early July, there were meetings between the staffs. In my own opinion, the administration found it would be expensive to interpret it in the liberal way that we intended, and, therefore, it was interpreted as it was.

One final question; as you know, the President at the Al Smith dinner had expressed his support for parochial schools. My State has a high percentage of parochial schools, the highest in the United States, between a third and a quarter of the youngsters go to them. I have held hearings, on the matter. Yet when I sought to get an idea of what the President intended, we had a great deal of trouble first in getting a witness, and then in getting a responsive witness from the administration.

What are the President's intentions specifically with regard to helping the parochial schools, the private schools?

Mr. MARLAND. Let me say the President has clearly and specifically and totally committed himself to doing something to help the non-public schools.

Senator PELL. That was a year ago at the Al Smith dinner, but how is it being implemented?

Mr. MARLAND. There has been now at my direction a study which culminated about a month ago, going on for nearly a year that includes addressing this topic of Federal concern for the nonpublic schools.

It was an extremely delicate topic as you well know.

The President has made known his position generally, that he is in support of the position by Mr. Mills with regard to his formula for tax credits.

Now, whether specifically and concretely, he comes down in direct support of that legislation as it exists, or whether he affirms the principle of the tax credit, I cannot say, but that is an administration level issue beyond me.

However, I have no doubt whatever I have to say, that my orders as a member of the executive department are to find constructive ways to assist nonpublic schools.

I have submitted alternatives to the White House. They are now under study. They are my marching orders.

Senator PELL. You have had your marching orders, but how have you carried them out?

Mr. MARLAND. By preparing a variety of alternatives. They refer not only to the nonpublic schools, but also to the needs of elementary and secondary schools in the big cities.

Senator PELL. Is this all that has been done in the year and a half since the President has made his statement at the Al Smith dinner?

Mr. MARLAND. He has prepared and presented what I would call has general support for the theory expressed in Mr. Mills' bill.

Senator PELL. Thank you very much.

The CHAIRMAN. Senator Dominick.

Senator DOMINICK. Thank you, Mr. Chairman.

Commissioner Marland, welcome to the committee. It sounds as though most of the people have been on the attacking side up to date.

I do not know if everybody is trying to run for President again or what, but let me say to you that you and your staff have been extremely helpful insofar as I am concerned, as the ranking member on the Education Subcommittee, and I very much appreciate it, and I am sure you will do an excellent job as Assistant Secretary. So I just want to congratulate you on the work you have done.

I want to make a couple of comments before I ask my questions.

It is my recollection, and I will say this to the Senator from Rhode Island, that just a few days ago a memo was passed in the Senate in which all advisory committees were abolished, unless they were reinstated.

This does seem to go along with what I had requested previously, and along with what I had asked the Secretary to supply me with; namely, a list of the advisory committees in the educational field, so we could determine how much money was put into them, and what they did, if anything.

In many cases, I have been talking to people who have been on advisory committees, who have only two or three meetings a year, have filed a report, and nothing happened from then on in.

They do not really know what happened to their report.

I certainly do not know, and I am sure that there must be files in the White House or somewhere that are full of these reports.

It would be helpful as far as I am concerned as the ranking minority member on the Education Subcommittee, if we would know what the number of committees are that do exist, and what in fact they are asked to do, and what weight is given to the recommendations which they make.

Now, the second thing I want to comment on is the student loan provisions. I am quite proud of the fact the Congress did work very rapidly in order to put in the old rule again until April, the first of April, so that we could get some student loans for this year's group of people trying to go through the higher education process, and I think it shows that Congress in an emergency situation of this kind will work quickly.

Your assistance here would be very helpful, and I appreciate it.

On the tax credit situation on the parochial schools, as the Senator from Rhode Island knows very well, that is a very, very touchy issue.

It is not only a very touchy issue politically speaking, but also an extremely touchy issue from a constitutional point of view, and I am sure this is something that has been taken into account insofar as the elementary and secondary schools are concerned. But to the Senator from Rhode Island, for the record, I want to say again, I have been working on this theory for 20 years, and I have gotten it through in the higher education field, and Congressman Mills both times refused to accept this in conference on the ground he did not believe, so he said, that the tax credits should be used for specific social purposes, and I have a letter to that effect from him in my files.

In view of his bill, and it is my hope that he has had a change of heart, and that we can get working on this, so that we can help preserve freedom of educational choice with regard to private schools.

Certainly in the following year I intend pressing for action along this line.

We obviously cannot get anything through this year. I would like to ask just a couple of questions, which have been asked of me.

There are rumors for whatever they may be worth, that the advisory councils in the educational field are about to be restricted.

What is the situation insofar as the Office of Education is concerned with regard to the roles and operations of these councils?

Mr. MARLAND. Those are two of some 34 councils that now are attached one way or another to the Office of Education, Senator.

As far as I know, there is nothing unique in the status of these two particular councils.

They are both active, they are both actually manned with personnel, they both have full-time staffs, they both have a budget—one has a budget of nearly a third of a million dollars, one has about a hundred thousand dollars.

They are effective councils to the extent that they do serve closely with the commissioner of education as advisors, and they do provide

reports to Congress, suggesting ways of increasing effectiveness of the programs in which they are concerned.

I have, and this may be what has caused the rumor that you described, written recently to the chairmen of all of our councils, saying that we have a real presence of differences, confusions, disparities, lack of consistencies, in procedure among all of these many councils.

I told them I am asking them to come together to sit down with me and hammer out a standing procedure that will affect all councils.

For example, some councils have no staff at all. They hardly have travel money.

Some councils have quite elaborate staffs, or resources to hire consultants and grant income to people that work for them in one way or another.

These inconsistencies have caused in my judgment severe confusion, wide disparity, and I think failure of the advisory committees to be as effective as they might be.

There are too many of them. People know I feel that way. People know that I have looked for ways to consolidate and remove redundancy among committees, and some may feel that they are about to go out of business because of that assertion on my part.

I do not think the individual members will go out of business, so much as they will consolidate three committees into one, and as people retire, they will not be replaced, but the functions of the committees will probably remain.

Senator DOMINICK. I think that is a very helpful answer, and I think personally that is a very good idea.

Everytime we have a bill that goes through this committee, I keep bringing up the question of the necessity of another advisory council, but for reasons, which I am not quite sure, everybody says we are going to have an advisory council, and we have a proliferation of them now in all fields, not just education, which I would think would drive any administrator out of his mind before he is through.

I think your common sense in trying to put this together is very admirable.

Senator BOGGS. Will the Senator yield for a question on that point?

Commissioner, to what you say, does what you say apply to those advisory councils that are created by statute?

Mr. MARLAND. Senator Boggs, the way the law reads, if I am interpreting this correctly, annually, the commissioner of education is required to report to the Congress on the condition of each of the statutory committees, and as to whether or not they are to be continued. Therefore, I do that in my annual report, a copy of which the reporter has. It is in the back section of that report. It accounts for each of the committees, whether or not they should be continued, and that is done.

Senator DOMINICK. For the purpose of the record, I should say that section 438 of the General Education Provisions Act, subsection (a), which I personally got into the law, because I did not feel we really knew what was going on, and I am glad we were getting some coordination here.

I appreciate it.

I have been asked to follow up on the Indian education program. Again, the question concerns funding, and I gather, from what you say, you are going to try to fund this as rapidly as possible, but you are not in position to say what that funding will be at the present time?

Mr. MARLAND. To be very blunt, I would say that as I reported to some Senators, also interested in this bill, that soon after its passage, it is doubtful a feasible program including funding, planning, project activity, can be mounted short of fiscal 1974. Therefore, we have already gone so far into this fiscal year, and our council is not yet appointed, our deputy is not yet appointed, as the law requires, our program is not yet in place. We should devote our energies this year at least in implementing the existing authorities, and existing appropriations. They should be directed more to Indian children and to young people, and that will be our principal effort in 1973.

I cannot predict now there will be funds in the 1973 supplemental, but I have to say under the conditions we have in that supplemental budget, that I would not guarantee it.

Senator DOMINICK. You are talking about the new Indian program?

Mr. MARLAND. Exactly.

Senator DOMINICK. Now, one more question, in the education amendments of 1972, we provided a secondary market on student loans.

Has that been established?

Mr. MARLAND. The term we use for the secondary market on student loans in the legislation is Sally Mae, Student Loan Marketing Association.

It is a private corporation, sponsored by the Government. We have submitted a slate to the White House which must name the board of directors for this institution.

I presume that the White House will act upon that slate quite soon. That will then establish the entity of Sally Mae. I predict that they will staff up soon after they have a board of directors.

We have established a task force to do it, to anticipate the planning work that they must face, providing them with some alternatives to face when they come into being, so as to shorten as far as possible any delays after they are named.

They will undoubtedly name a president and a director, and I think it will probably be 5 or 6 months after they come into being before they will start to move ahead.

I will predict, therefore, that probably by the next school year, September 1973, that Sally Mae should be in place ready to relieve the banking market of the functions that they carried out on student loans, in order to liberalize the conventional freedom to administer loans. I can predict in general, by the next cycle of student loan grants, they should be in place.

Senator DOMINICK. Thank you. I think that is extremely helpful, and I just wish we would go forward a little faster, as you and I know of the tremendous demands for student loans, and as soon as we can get this, obviously, the more money will be released, so that we can be able to go forward with additional student loans on that.

Once again, I just want to say I think you have done an excellent job, and I really appreciate the cooperation which this committee has received, and which I personally and my staff have received.

Mr. MARLAND. Thank you.

The CHAIRMAN. Senator Boggs.

Senator BOGGS. I will not take any time. I think Senator Dominick touched primarily on the questions I had in mind, but I do have one or two other questions on the national advisory council on special education, and I would like to submit this for the record, and the commissioner may answer them.

Mr. MARLAND. It will be answered promptly.

The CHAIRMAN. Are there any further questions?

Senator BOGGS. I think the questions on the student loans were already answered.

That has been one of our problems, and I hope we can get on with the secondary market. That seems to be the bottleneck.

The CHAIRMAN. Then your statement and questions and answers will be made a part of the record.

(The statement and questions referred to follow:)

STATEMENT OF HON. J. CALEB BOGGS, A U.S. SENATOR FROM THE STATE OF DELAWARE

Mr. Boggs. Thank you very much, Mr. Chairman. I appreciate your thoughtfulness in allowing me to sit in on this confirmation hearing.

I had wanted to come by because of my great interest in the excellent work of Commissioner Marland.

Your office recently issued proposed guidelines for management and operation of Office of Education public advisory committees. I was very interested in those proposed guidelines because of my great interest in the work of many of your advisory committees, particularly the national advisory council on vocational education.

Since that council was established under Public Law 90-576, and it has many functions independent of your office, would these proposed guidelines apply to the national advisory council on vocational education?

1. The proposed guidelines state that advisory council contacts with the Congress should be maintained only to the extent that the contacts help the councils advise the Office of Education, and that the Office of Education should be apprised of such contacts. Is this an attempt to restrict the activities and functions of advisory councils? Is it meant to prevent advisory councils from testifying before congressional committees, or to censure testimony which might be contrary to Office of Education positions?

2. Would this guideline apply to advisory councils which have statutory functions, in addition to their advisory functions, such as reviewing the administration, the operation, and the effectiveness of the Office of Education's programs? Is this guideline intended to prevent them from testifying before Congress with regard to the results of such reviews?

3. The proposed guidelines outline the financial support which the Office of Education will provide councils. Would these figures apply to councils which have specific line item appropriations?

4. Some councils are authorized by statute to conduct independent evaluations of programs carried out by the Office of Education, and to publish and distribute the results. Are the guidelines concerning committee and council reports designed to control the frequency and distribution of such independent evaluations?

5. Will the guidelines prevent those councils which have authority to independently evaluate programs of the Office of Education from utilizing sources outside the Office of Education for the data that is necessary for their evaluation?

Senator DOMINICK. Mr. Chairman, would you yield for just one more question?

I wonder, Commissioner Marland, when you get a chance at your leisure, if you could get a letter to me and the committee showing the number of agencies and departments and the amount of money that is being spent on educational affairs first, and secondly, the amount of money that is being spent, and the agencies involved on Indian education.

Mr. MARLAND. I would be pleased to.

Those data are quite readily at hand. The data can be furnished promptly.

The CHAIRMAN. Then without objection, that will be made a part of the record.

(The information referred to follows:)

BUDGET ESTIMATES FOR OE PROGRAMS BENEFITTING INDIANS

<u>PROGRAM</u>	<u>FY 1970</u>	<u>FY 1971</u>	<u>FY 1972</u>
<u>Elementary and Secondary Education Programs</u>			
Compensatory Education.....	\$25,660,333 (10,660,353)	\$27,000,000 (11,702,304)	\$27,000,000 (12,184,000)
Library Resources and Instructional Materials.....	160,493 (60,693)	333,233 (117,223)	373,114 (133,014)
Supplemental Educational Centers: Guidance, Counseling and Testing (State Grants).....	564,000 (231,425)	618,000 (253,196)	626,800 (256,685)
(Special Projects).....	-- (--)	44,717 (44,717)	45,329 (44,717)
(NDEA Title V-A).....	45,800 (17,000)	-- (--)	-- (--)
NDEA Title III.....	115,700 (42,500)	184,865 (50,000)	184,865 (50,000)
Bilingual Education.....	1,049,427 (150,000)	2,163,926 (620,000)	3,163,926 (750,000)
Grants to Strengthen State Departments of Education.....	11,000	--	--
Dropout Prevention.....	220,000	765,300	765,300*
School Assistance in Federally Affected Areas (P.L. 874).....	18,784,000	23,096,000	26,390,000
School Construction in Areas Affected by Federal Activities (P.L. 815).....	934,000	5,549,917	1,500,000
Emergency School Assistance.....	--	94,519	1,634,276
Follow Through	1,149,485	2,431,605	3,336,241
<u>Education Professions Development</u>			
B-2, State Grants.....	--	565,389	500,000
Personnel Training Program.....	--	--	--

<u>PROGRAM</u>	<u>FY 1970</u>	<u>FY 1971</u>	<u>FY 1972</u>
<u>Education Professions Development (cont'd.)</u>			
Teacher Corps.....	\$ 916,140 (261,509)	\$ 2,382,049 (137,609)	\$ 3,388,476 (137,609)
Attracting and Qualifying Teachers to Meet Critical Teacher Shortages.....	471,556	--	--
Bilingual Education.....	--	138,851	139,000
Pupil Personnel Services.....	--	515,851	490,051
Education Leadership.....	--	212,036	345,000
Career Education.....	--	86,291	86,291*
Career Opportunities Program.....	--	1,114,750	1,095,105
Urban Rural School Program.....	--	293,750	488,750
Training for Teacher Trainers.....	1,000,000	1,130,000	850,000
Teacher Training of Early Childhood Teachers.....	256,875	206,454	101,670
Teacher Training for Special Education for the Handicapped.....	326,841	207,080	223,150
<u>Higher Education</u>			
Training of Teachers of Higher Education.....	92,969	217,532	217,532 *
Cooperative Education Programs.....	99,360	100,000	100,000
Strengthening Developing Institutions....	535,000	943,000	1,600,000
Talent Search.....	578,407	722,000	791,000
Special Services.....	499,900	1,248,864	1,025,000
Upward Bound.....	2,055,102	2,235,086	2,235,086 *
Higher Education Construction Loans		600,000	--
<u>Adult Basic Education</u>			
State Grants.....	417,000 (84,000)	450,000 (90,000)	500,000 (100,000)

<u>PROGRAM</u>	<u>FY 1970</u>	<u>FY 1971</u>	<u>FY 1972</u>
<u>Adult Basic Education (cont'd)</u>			
Teacher Training.....	\$ 175,000 (140,000)	\$ 354,592 (100,000)	\$ 185,000 (130,000)
Special Projects.....	390,000 (235,000)	739,000 (325,000)	860,000 (515,000)
<u>Manpower Development and Training</u>	2,518,418 (1,556,111)	2,708,405 (1,582,473)	3,500,000 (2,100,000)
<u>Vocational Education Exemplary</u>	107,005	115,463	115,582
<u>Student Financial Aid</u>			
Educational Opportunity Grants.....	577,100	709,348	709,348*
College Work-Study.....	678,100	630,552	630,552*
National Defense Student Loans.....	548,700	709,500	709,500*
<u>Education for the Handicapped</u>	56,000 (56,000)	110,000 (110,000)	130,000 (130,000)
<u>Libraries and Educational Technology</u>			
Library Services (LSCA) Titles I, II, and III	--	1,583,000	2,350,000
(Library Projects Serving Indians Clearly Identified)		(295,157)**	(313,157)**
Educational Technology Media Specialists Program		15,615	15,615*

<u>PROGRAM</u>	<u>FY 1970</u>	<u>FY 1971</u>	<u>FY 1972</u>
<u>Research and Development</u>			
Library Research Projects	\$ --	\$ 198,000	\$ --
Cooperative Research Projects	--	181,000	--
Educational Laboratories Research Projects	--	1,583,000	--
	<hr/>	<hr/>	<hr/>
TOTAL	\$60,993,711	\$85,288,540	\$88,403,559
Total, BIA	(\$13,494,591)	(\$15,132,522)	(\$16,531,226)

(Figures enclosed in parentheses represent the amount of OE money transferred to the Department of Interior through set-asides or project grants. This figure is included in the unparenthetic total. Amounts in parentheses under Adult Education Programs and Bilingual Education Programs are amounts spent on Indian reservations rather than amounts transferred to the Department of Interior.)

*Estimate for previous year due to absence of more recent data.

**Parentheses do not indicate BIA projects.

Senator BOGGS. Mr. Chairman, I want to thank the chairman too. I have been very much interested in this point. I congratulate the Commissioner.

The CHAIRMAN. We are glad to have you join the committee, Senator.

Senator Cranston, do you have any questions?

Senator CRANSTON. Thank you, Mr. Chairman. I join the others in welcoming you to the committee.

I have just now received a copy of your letter of September 19 to Chairman Williams, referring to the status of various Office of Education programs.

I have not had time to read it carefully. However, a quick look at the page where you describe the veterans' cost-of-instruction allowance, which is the provision I authored in the Senate, seems to indicate little has happened in the 3 months since that bill was signed by the President.

It is particularly discouraging to note this lack of progress after I received a copy of a very good letter from the Deputy Commissioner dated June 23, which I understand was mailed to college presidents across the country, encouraging institutions to take affirmative action in serving veterans in need of educational services.

I would just like to cite a few sentences from this rather long and very encouraging letter as of that time.

I will submit this for the record, and it reads as follows:

(The letter referred to follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF EDUCATION,
Washington, D.C., June 23, 1972.

DEAR PRESIDENT: As a result of the winding down of the Vietnam war, an increasing number of servicemen are being returned to civilian life in need of jobs and education. Servicemen are being released at the rate of 80,000 persons a month and as veterans a significant number of these men are finding that employment opportunities are unavailable. In addition to unemployment rates which have exceeded 10 percent for Vietnam era veterans, we find that less than half of the Vietnam era veterans are taking advantage of educational benefits. Only 13 percent of those veterans with only high school completion to their credit are going on to college.

The purpose of this letter is to encourage colleges, universities, and other post-secondary institutions to make every reasonable effort to accommodate the large numbers of veterans who will be in need of education or job training to enable them to begin or to continue useful careers. Many schools and colleges have set aside admission requirements in accepting veterans as well as establishing special services and remedial programs to enable them to participate in programs either in degree or non-degree status.

The Office of Education is cooperating with other Federal agencies in an effort to reach as many servicemen as possible in encouraging them to accept education as an option for preparation for a career. In addition, we are working actively with the American Association of Junior Colleges to improve the outreach capability of these schools to accommodate returning servicemen. It is evident that a significant counseling activity must be made available to enable veterans to determine the education program which is most suited to their needs. I wish to ask each of you to take an institutional responsibility for extending this counseling service in your community.

One example of an effective way to reach veterans is through the use of work-study slots by employing Vietnam era veterans as counselors with the special responsibility of recruiting additional veterans for the school or college. Evidently Vietnam era veterans respond more readily to other Veterans performing as recruiters or counselors. Other recruiting techniques include the use of lists of recently discharged servicemen which are available locally from veterans organizations.

A number of schools and colleges have found ways to open their doors to veterans and to provide special programs of academic preparation to facilitate the adjustment of marginally qualified veterans to an education or training program. I urge you to accept this kind of accommodation as a kind of special responsibility to the serviceman/veteran.

One measure that is being adopted by the Office of Education during the current year as a result of special funds appropriated by Congress is to establish specially designed Upward Bound projects which will serve Vietnam era veterans as a special client group. We are hopeful that this model effort will enable many institutions to find ways to reach and serve the Vietnam era veteran. Congress has also relaxed the eligibility of veterans for the National Defense Student loans as well as discount their veterans educational benefits in determining the newly authorized basic opportunity grants. The Education Amendments of 1972 also authorize grants to institutions which enroll large numbers of veterans to encourage these institutions to increase the numbers of veterans enrolled.

Now pending before the Congress are amendments to the G.I. bill which will increase substantially the monthly amounts paid to veterans who are pursuing educational programs.

The purpose of this letter is to enlist your cooperation in what must be a national effort to reach and serve the significant number of young men and women who have served their country well and who are deserving of our best efforts to provide an education which is suited to their special needs. I ask for your cooperation and I encourage your response in such ways as may be appropriate.

Please feel free to call upon this Office for additional information or service, and we will welcome your suggestions for ways to initiate educational opportunities for all Vietnam era veterans.

Sincerely,

JOSEPH P. COSAND,

Deputy Commissioner for Higher Education.

Senator CRANSTON. Now, I am concerned about what is brought forth in this letter, urging colleges and universities to go all out. I know you realize such letters carry a great deal of weight with institutions competing for Federal dollars, but there seems to be no money to back up the rhetoric about the veterans cost-of-instruction allowance.

This situation has caused a great deal of concern among colleges in California and elsewhere.

In California, it has occurred particularly among the fine community colleges, which want to serve veterans.

My question is, when will the veterans' cost-of-instruction regulations be issued, and when will the program be operable?

Mr. MARLAND. This is one of 17 different task forces, that is addressing this problem, as a result of the Education Amendments of 1972.

The information you have is correct, and at this time the regulations are not in place.

Funding at this moment is uncertain. Until the supplemental is approved by OMB, it remains uncertain, but we are hopeful it will be brought before the Congress next week.

I cannot predict whether that will be. On the other hand, we have consciously and deliberately this year set aside \$5.8 million, within existing programs to be targeted solely to veterans.

We have put that into our talent search program, consciously to encourage universities and colleges and community colleges to direct those moneys to veterans.

We have also made it clear that the Office of Education, through letters of this kind as well as many meetings, is urging universities with their own resources, and within the existing resources of Federal support, to target their resources to veterans.

We have also established veteran counselors on our payroll through our very difficult salaries and expenses funds, which, I hope you know, are scarce in our office.

We have established 12 counselors overseas last year at ports of embarkation for returning veterans.

They were in Saigon, they were in Korea, and they were in Berlin, working with the Department of Defense, and serving as part of the network of counseling both for employment and for education.

Those people are now being multiplied in the United States this year as members of our staff, on our payroll, situated strategically throughout the country to serve as veteran counselors, to assure both job opportunity information and education information.

At this time the exact funding of the new program which I know you are keenly interested in, and which I am interested in too, remains in doubt.

Senator CRANSTON. Have you used the power and prestige of your office with the Office of Management and Budget, to seek funds?

Mr. MARLAND. Very earnestly, sir.

Senator CRANSTON. For the veterans' cost-of-instruction program specifically?

Mr. MARLAND. For the total Education Amendments of 1972.

Senator CRANSTON. The universities and colleges in California would like to devote their resources to this program.

They just do not have the resources to spare. They cannot do too much without help. I understand the administration is sending to the House Appropriations Committee the budget request for the first supplemental appropriation.

Does it include any funding for veteran cost-of-instruction allowances?

Mr. MARLAND. It is too early to say.

As I mentioned earlier, we are working night and day with OMB, and literally night and day. We were at work last night with them, attempting to reconcile the budgets.

There is an extraordinary large interest in the 1972 amendments beyond the level the administration feels is reasonable, in trying to present a budget that will satisfy Congress, and again one that will not invite another veto, and this is very difficult going.

Senator CRANSTON. Can you tell us what was requested for the veteran cost-of-instruction program by your office?

Mr. MARLAND. I think it is premature to do that, until the budget is finalized, and until then, the administration does not have a budget.

Senator CRANSTON. We have often gotten that information from other agencies.

Mr. MARLAND. I think it would be improper for me to predict what OMB, what the Secretary, what the President will present to Congress next week.

Senator CRANSTON. What results have been achieved by the 12 counselors you mentioned that you have overseas?

How many people have gotten into the GI program?

Mr. MARLAND. They reached either individually, or in large groups, some 80,000 veterans last year.

We are now running an evaluation to determine the outcome of that: did the young person get his job; did the young person know where

to go when he got to the United States; did he get into the community college?

That evaluation is going on now, and I would be pleased to report when that is finished.

Senator CRANSTON. Would you please do that?

Mr. MARLAND. Yes.

Senator CRANSTON. On another topic, I offered an amendment to the Education Amendments of 1972, setting up a much needed consumer education program within the Office of Education. Again, looking at that letter to Chairman Williams, I am discouraged to find the program is under study, but the Director of Consumer Education as required by law has not been appointed.

There is no concrete evidence anywhere, that I have found, that the program is really being implemented.

Can you give us a firm date when we can expect that program to be in action?

Mr. MARLAND. It should not be very long in that case.

We do have one of the issues here, and I must point out to the committee, I think it would be interesting to you, there are some 400 issues to be settled administratively implicit in this new law.

It is an immense package of legislation.

One of the issues in this law is shall the new authority be added to the existing Consumer Education Office in the Office of Education, or shall it be a separate autonomous office. Shall it build on what is now going on, or shall it be viewed separately?

Those issues are not difficult to resolve. It is a matter of internal administration mechanics, and I should think we should have that program in motion with whatever resources we have within a very few days.

Senator CRANSTON. I would like to add that it was my feeling, and I think the feeling of others, that the consumer education program really should be separate, that it really does not fit into current vocational programs.

Mr. MARLAND. This is a good illustration of where our staff can sit down with congressional staff, and iron out such irregularities or differences as we see them and reconcile them.

Senator CRANSTON. Fine.

I appreciate an opportunity to have some input.

Will the administration ask for any funds specifically for this consumer education program in the supplemental request?

Mr. MARLAND. As in the case of the veterans, I think it is premature to try to predict that.

Senator CRANSTON. I was not asking for a figure.

I was asking, will there be something?

Mr. MARLAND. I asked for something, sir.

Senator CRANSTON. The hearing record will be kept open, and when you can, I would appreciate it if you could supply the office recommendation, the HEW recommendation, and the OMB final figure.

I realize you do not want to do that now.

Mr. MARLAND. I suspect it will be in hopefully by Tuesday or next week.

I think the House committee has called for hearings as soon as possible.

Senator CRANSTON. Will you provide that?

I am asking specifically for the office requests, the final Department request, and the OMB final figure. Will you provide that?

Mr. MARLAND. There again, I am not sure of the protocol, but we may be up against an irregularity, to disclose what one agency said to OMB, and what OMB said.

The protocol may forbid that. I am not sure.

Senator CRANSTON. I am not asking for a figure now, but ultimately.

Mr. MARLAND. As to what was requested by the agency and what OMB's final figure is?

Senator CRANSTON. What was requested at three levels—by your office, what the Department requested, and what OMB finally approved.

Again, I am not asking for that now. I am asking for it when you feel it is appropriate.

Mr. MARLAND. I understand the question, and I guess I will have to have the advice of the Secretary, whether it is appropriate, and when I can deliver it.

Senator CRANSTON. We actually have obtained that in previous years.

Mr. MARLAND. If it is customary, I see no reason why we cannot.

(Information supplied for the record follows:)

October 9, 1972

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
 Analysis of Proposed Administration Changes to the 1973 Budget
 for Initial Implementation of the Education Amendments of 1972
 (Dollars in Thousands)

DIVISION OF EDUCATION

	1972 Comparable Appropriation	1973		Change	Comments
		President's Budget (January)	Revised Request		
Agency School Assistance.....	\$ 19,799	\$1,000,000	\$ 487,500 ^{1/}	\$ -512,500	The supplemental provides for initial-year implementation of the President's \$1.5 billion commitment for aid to desegregating schools.
per Education					
Student assistance:					
(a) Interest subsidies on insured loans (HEA-IV-B). (Amount of new loans subsidized).....	196,600 (1,160,000)	215,000 (1,351,000)	215,000 (1,351,000)	--- (---)	Proposed supplemental defers until January the transmittal of higher education estimates for which planning is necessary or for which no funds are required in the interim. All of these programs are forward funded; that is, funds appropriated this fiscal year are used to support programs in academic year 1973-74. An amount of \$3 million has been included in the request for Office of Education salaries and expenses for planning for the new student aid programs.
(b) Direct loans: (NDEA-II).....	- 316,600 ^{2/}	5,000	269,400	+264,400	1972 supplemental of \$23.6 million reduces funding requirements for academic year 1972-73. Revised request plus 1972 supplemental maintain 1971-72 program level of \$293 million.
Subtotal.....	513,200	220,000	484,400	+264,400	
Institutional assistance					
(a) Construction:					
(1) State administration and planning (HEFA-I)....	6,000	3,000	3,000	---	Appropriation language makes amount available for establishment of State Postsecondary Education Commissions as required by Part L of the new law.
(b) University community services (HEA-L).....	9,500	5,700	5,700	---	
(c) Aid to land-grant colleges:					
(1) Bankhead-Jones Act.....	10,000	---	---	---	
(2) Permanent appropriation.	(2,700)	(2,700)	(2,700)	(---	
(3) Guam and Virgin Islands.	---	---	6,000	+6,000	

1e total estimate for Emergency School Aid is \$500,000,000, of which \$12,500,000 is shown under Salaries and Expenses, OE and Office of the secretary for program administration.
 amount includes \$293 million for academic year 1971-72 and \$23.6 million for academic year 1972-73.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
 Analysis of Proposed Administration Changes to the 1973 Budget
 for Initial Implementation of the Education Amendments of 1972
 (Dollars in Thousands)

HEALTH DIVISION
 OFFICE OF EDUCATION

	1973			Comments	
	1972 Comparable Appropriation	President's Budget (January)	Revised Request		Change
Higher Education (cont'd)					
Institutional assistance (cont'd)					
(d) Postsecondary innovation....	\$ ---	\$100,800	\$ 10,000	\$ -90,000	Revised request reflects congressional modification of Administration proposal for a National Foundation for Higher Education.
Subtotal.....	25,500	108,700	24,700	+16,000	
College personnel development:					
(a) Less-than Ph.D. training (EPDA-E).....	10,844	13,000	---	-13,000	Proposed supplemental transfers this item to "Educational Renewal" since new law requires appropriation of all funds for Education Professions Development in one account.
Total.....	549,544	341,700	509,100	+167,400	
Library resources					
College library resources.....	11,000	11,000	12,500	+1,500	Increase provides for basic grant of \$5,000--as required by Education Amendments to each of approximately 2,500 eligible institutions of higher education.
Librarian training.....	2,000	3,000	3,572	+572	Increase meets set-aside requirement in Education Amendments for librarian training.
Library demonstrations.....	---	---	1,785	+1,785	Shown in President's January Budget under "Educational Renewal" appropriation at \$2,000,000. Reduced request reflects effect of new set-aside requirements. Item shown in this appropriation because new law authorizes appropriation of a single amount for activities 1, 2 and 3 which is distributed on the basis of percentage allocations.
Total.....	13,000	14,000	17,857	+3,857	

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
 Analysis of Proposed Administration Changes to the 1973 Budget
 for Initial Implementation of the Education Amendments of 1972
 (Dollars in Thousands)

EDUCATION DIVISION
 OFFICE OF EDUCATION

	1972	1973	
	Comparable	President's Budget	Change
	Appropriation	(January)	Request
Educational renewal			
1. Educational systems improvement:			
(a) Site personnel development:			
(1) Renewal sites (EPDA-D)...	2,000	30,200	150 ^{1/}
(2) Career opportunities and urban-rural pro- grams (EPDA-D)	36,700	39,600	- 3,893
(3) Categorical Projects (EPDA, B-2, D.)	45,565	7,000	+10,953
(b) Personnel development			
(1) Teacher Corps (EPDA, B-1).....	(37,435)	(37,435) ^{2/}	65
(2) Career education personnel (EPDA, D&F)...	6,900	10,000	+ 1,860
(3) Other personnel development (EPDA-D, AEA).....	4,900	1,000	---
(c) Less-than Ph.D. training (EPDA Part E).....	---	---	+ 8,000
(d) Long-term training (EPDA Part C).....	---	---	+ 5,930
(e) New careers in education.....	300	500	+ 500
Subtotal.....	96,365	87,800	-6,635
(f) National priority programs: Library demonstrations.....	2,000	2,000	---
Total.....	98,365	89,800	-8,635

Comments

Proposed supplemental reflects decision not to proceed with Renewal sites until the enactment of specific authorizing legislation. The revised budget also reflects funding of new training activities and redistribution of funds among existing activities required by amendments to the Education Professions Development Act.

Proposed supplemental includes this activity under "Library resources" appropriation.

^{1/} National Advisory Committee.

^{2/} \$37,435,000 is included for Teacher Corps in the pending HEW appropriation bill. The additional \$65,000 is necessary to meet the legislative formula.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
 Analysis of Proposed Administration Changes to the 1973 Budget
 for Initial Implementation of the Education Amendments of 1972
 (Dollars in Thousands)

1972 Comparable Appropriation	1973		Change	Comments
	President's Budget (January)	Revised Request		
\$ —	\$ —	\$ 13,905	\$ +13,905	
(—)	(—)	(486)	(+486)	
IES AND EXPENSES:				
sitions)				
gency School Assistance			(\$+10,959)	Study expected to be completed by summer of 1973. Includes funds for contracts, staff, and other administrative expenses.
sitions)			(+485)	
h Camp Safety (to be transferred			(\$+300)	
HSMA)				
ning for New Student Aid Programs			(\$+3,356)	
sitions)			(+31)	
ning for Other New Programs			(\$+787)	
sitions)			(+29)	
sfer to the Assistant Secretary			(\$-1,497)	
r Education			(-59)	
sitions)				
OFFICE OF EDUCATION	680,708	1,445,500	1,109,327	-335,973

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
 Analysis of Proposed Administration Changes to the 1973 Budget
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EDUCATION DIVISION

	1972		1973		Change	Comments
	Comparable Appropriation		President's Budget (January)	Revised Request		
1. Program	\$ 84,150	\$	\$ 86,180	\$		
2. Administration	3,066		5,902			
Total	87,216	125,000	92,082	-32,918		
Obligations	(97,958)	(110,000)	(110,000)			
(Positions)	(135)	(350)	(350)			
ALARIES AND EXPENSES, ASSISTANT SECRETARY FOR EDUCATION			2,242	+2,242		Provides support for the Assistant Secretary for education, established by the Education Amendment, to direct and supervise the Division of Education, which consists of the Office of Education and the National Institute of Education. Includes 40 new positions and 59 positions transferred from the Office of Education.
(Positions)			(99)	(+99)		
			2,242	+2,242		
TOTAL, EDUCATION DIVISION	767,924	1,570,500	1,203,851	-366,649		
TUDY OF POSTSECONDARY EDUCATION FINANCING			1,500	+1,500		Supplemental provides support for the National Commission on the Financing of Postsecondary Education, an independent agency within the executive branch, which is required by the new law to make a report to the President and Congress. The proposed appropria- tion language makes the funds available for an additional year to allow sufficient time for completion of the study.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
 Analysis of Proposed Administration Changes to the 1973 Budget
 for Initial Implementation of the Education Amendments of 1972
 (Dollars in Thousands)

OFFICE OF THE SECRETARY	1973			Change	Comments
	1972 Comparable Appropriation	President's Budget (January)	Revised Request		
1. Departmental Management..... (Positons).....	\$ --- (---)	\$ --- (---)	\$ 541 (47)	\$ +541 (+47)	Provides for increased legal, audit and financial management and public affairs workloads created by the Education Amendments of 1972.
2. Office for Civil Rights..... (Positons).....	--- (---)	--- (---)	1,322 (115)	+1,322 (+115)	The funds provided will be used for grant eligibility determination, evaluation of school district plans, negotiation of acceptable plans, assisting the Secretary on waiver applications for noncompliant districts, and participation in informal enforcement proceedings. In addition, funds would also be used to support activities related to the proposed emergency school aid program and for enforcement of title IX of the Higher Education Act which prohibits sex discrimination in college admissions.
TOTAL NEW SUPPLEMENTAL REQUEST	767,924	1,570,500	1,207,214	-363,286	
Items included within the President's January budget for which a supplemental request is being deferred.....		1,030,511	---	-1,030,511	Includes higher education programs--principally student assistance--and Follow Through for which estimates will be submitted in January.
GRAND TOTAL		2,601,011	1,207,214	-1,393,797	

Senator CRANSTON. On another topic, I know you are aware of the series of discussions that I and my staff engaged in with Secretary Richardson and with his staff regarding the organizational status of bilingual education.

While the conference committee was working on all of these amendments, these conversations were going on. As a result, the Secretary agreed to make bilingual education a division with the Bureau of Elementary and Secondary Education.

That was done. I am delighted that there was cooperation in following it through.

Mr. MARLAND. That was done within a very few days after the committee action took place.

Senator CRANSTON. That is correct, as I understand it.

I understand that the new Bilingual Division does not have yet a permanent Director, even though the Division has been in existence since May.

Can you tell us when that appointment should be expected?

Mr. MARLAND. There are three outstanding candidates under consideration for this.

I think the decision should be made very soon, a matter of days.

I am waiting for recommendations on it. I have interviewed the people. It is not usual for me to interview them, and it is not common for the Commissioner to interview people of this scale, and yet I made it a personal point to interview the people.

I think we will have a recommendation for this nomination within days.

Senator CRANSTON. Are you consulting with Armando Rodriguez, your Associate Commissioner for Regional Coordination?

Mr. MARLAND. He is a very intimate consultant on this subject. We greatly respect his capacities as a Mexican-American leader and school executive.

Senator CRANSTON. Can we expect that the Director will be someone with a Spanish-American background, or some other bilingual background?

Mr. MARLAND. Unquestionably.

Senator CRANSTON. What percentage of those persons working in the Bilingual Division are Spanish-American or of other minority background?

Mr. MARLAND. I cannot give you an exact figure, except to say we have been intensely increasing this ratio within this past year. My impression is that, these are rough figures, I may have to confirm them in a note to you.

Senator CRANSTON. Could you do that for the record?

Mr. MARLAND. It moved from two to I think 11 this past year.

There are several bilingual people in the program.

Senator CRANSTON. I would appreciate firm figures.

(The information referred to follows:)

PERSONS WORKING IN THE BILINGUAL DIVISION WHO ARE SPANISH-AMERICAN OR OTHER MINORITY BACKGROUND

DIVISION OF BILINGUAL EDUCATION

Office of the Director.—2 out of 6 are bilingual/bicultural.

Program Officers.—3 out of 8 are bilingual/bicultural; 3 are bilingual, with dominant language English.

Secretarial Staff.—1 out of 5 is bilingual/bicultural.

Total.—9 of 19 are bilingual.

Senator CRANSTON. What is the Office of Education doing generally to further minority and hiring practices, particularly for Spanish-Americans?

Mr. MARLAND. I have one of the mandates directed to me from Secretary Richardson that we have an affirmative action plan for employing minority persons. I can submit to you for the record the percentage gain we have made on this over the past year or two since this mandate has been in place. We call it an affirmative action plan, and it is that we must see to it that minority persons are elevated to positions of policymaking. I am pleased to say that this does not only affect minority individuals, in terms of ethnic considerations, but women also.

We have been able to place a significant number of women in policymaking positions, 11, I believe, and we have been able to employ a number of Mexican-Americans, and other minority individuals in positions of high responsibility.

Senator CRANSTON. If you could accompany the report for the record with the number actually employed, and along with that a statement of your goals in this regard, as far as you could spell them out, I would appreciate it.

Mr. MARLAND. I would be pleased to do that, Senator.

(The information referred to follows:)

AFFIRMATIVE ACTION PLAN

The Office of Education is currently involved in revising and updating its affirmative action program for all minorities and for women. A new Deputy in the Office of Equal Employment Opportunities will be hired specifically to monitor affirmative action efforts for Spanish-surnamed Americans and to implement the President's 16 points for increasing Spanish-American opportunities.

In 1970, the Office of Education employed 17 Spanish-surnamed persons. In 1972, this number had nearly doubled—32.

Senator CRANSTON. Under the Emergency School Act, 4 percent of the appropriations are reserved for bilingual education programs. Can you tell us what the Office of Education is doing, what is being done in terms of budgeting?

Mr. MARLAND. I expect the total budget project will be a half billion dollars for the remainder of this fiscal year; suggesting 4 percent of that would be, in quick arithmetic, \$20 million. In any case, we now are at the level of about \$41 million in the bilingual programs that we now have. The added resources of emergency school aid will increase that significantly. We see that as under the administration broadly for the Associate Commissioner for Equal Education Opportunity, who is responsible for administering emergency school aid under the law. However, he will draw upon the resources of the existing bilingual program, and will endeavor to build upon that program, and yet insure the added conditions on qualifications implicit in the new law; namely, the Emergency School Aid Act as distinct from elementary and secondary education, so we will have two bilingual programs going on in the Office of Education, under two different authorities, hoping to take advantage of each other in furthering this intent.

Senator CRANSTON. Are you talking about cross funding?

Mr. MARLAND. No; to the contrary, recognizing the amendment, which the Senate enacted, we are being very careful not to get the funds mixed up.

Senator CRANSTON. Are you intending to staff this program with bilingual people?

Mr. MARLAND. Yes; as far as possible.

Senator CRANSTON. What will be their role in policy implementation?

Mr. MARLAND. The task force now working on this along with 16 other task forces is developing regulations, which regulations will ultimately become the program.

Here again, I would say, as with many of these regulations, we will want to sit down with congressional staff to be sure we are implementing the policy programs the way they were intended.

This one is a very complex law, the Emergency School Aid Act, and one in which we have still a number of unresolved issues.

The one surrounding bilingual education is quite clear, quite straightforward, and we believe it can be easily implemented in the ways that you would like to see it, and I would suggest that our staff jointly review our regulations well before they are published.

Senator CRANSTON. I have, finally, three questions that Senator Eagleton asked me to ask for him. He wanted to be here, but his presence is required on the Senate floor.

First, he wanted to ask, what is your general view of the role of Assistant Secretary for Education?

Mr. MARLAND. Well, as I see it, and as I have described it in my prepared statement, this is the line officer at the head of the established Division of Education, and as such, to be responsible to the Secretary for, as the law reads, I am reading now from the law, that the Assistant Secretary shall be responsible to the Secretary for the direction and supervision of the Office of Education, made up of the Office of Education, and the National Institute of Education.

Senator CRANSTON. I note in relationship to this question, it states that the only way a conference agreement was reached on the role of the Assistant Secretary, was with the understanding that policymaking authority would lie with the Commissioner of Education, and the Director of the National Institutes of Education.

Mr. MARLAND. I think each of those agencies should have autonomy to carry out the intent of their authorizing legislation.

The policymaking ultimately of course resides in the Secretary. I would see the role of the Assistant Secretary as one of being an outreach of his office, to provide leadership, to provide a national head as the legislation prescribes, and I see a policymaking role to articulate the power of both of those agencies.

It is my personal intention to insure great autonomy within those two separate units, and as my prepared testimony said, I do not see the Assistant Secretary's role as in any way diminishing the leadership, freedom, and power of those two agencies.

Senator CRANSTON. Let me add a question on impact aid.

In a hearing conducted by this committee in 1970, on your nomination of Commissioner, you indicated impact aid for school districts that have a high concentration of public housing students was a very feasible means of concentrating public funds where needed.

Yet, we have not seen any evidence of the commitment to the program from the administration.

The question is, do you still believe in the merits of this program?

Mr. MARLAND. Subsequent to that testimony, I suppose I have become better informed as to Public Law 874, which has such outrageous differences in terms of its relevance to the communities where it is delivered, that I would have to say at this time, I have very real misgivings about the equity of that law, Senator.

I think we should find a better way to deliver money such as to communities with public housing than under the conditions now allowed under 874.

Montgomery County, one of the highest income communities in the United States, it receives this kind of support from the Federal Government, and Pittsburgh, Pa., with vast areas of deprivation, received not a dime.

It is hard to reconcile.

Senator CRANSTON. A final question from Senator Eagleton relates to the right to read program. He states performance has not lived up to expectations of this law.

As you know, Senator Eagleton has introduced legislation to enact the program.

What are your views with regard to this?

Mr. MARLAND. I would welcome legislation giving statutory substance to the right to read.

I think like many things in education, it is easy to generate over-expectations. I am sure the right to read, mounted some 3½ years ago, carried with it some of that overexpectation.

We have pulled back to a realistic hard nosed budgeted program. At one time it had no money. The real value of the right to read is as a catalyst, that is, under a dynamic leadership moving out throughout the United States, all calling attention to workable programs that will solve this problem of illiteracy, for young people as well as adults, and to help install those programs, with relatively modest sums of money, but utilizing very large sums of indirect money, such as title I, such as title III, such as bilingual education, such as emergency school aid, to use those funds in constructive ways and in systematic ways in establishing reading programs.

That is our theory, and I think it will work.

Senator CRANSTON. Is this a change in the part of the administration's view of the right to read, because the amendments we were working over included an aspect giving statutory authority to the right to read program.

Has that position by the administration at the conference changed?

Mr. MARLAND. I think the administration said they do not need new legislation for the right to read.

It has been our policy not to add any more categorical programs.

Lord knows we have enough, 104, but insofar as the official administration's position, I think it falls under that condition, namely we do not need anymore legislation.

As far as I am concerned, if we had it, we could work with it.

I am not taking a different position from the administration.

I am saying we already have the program, it is funded, and it will probably be enhanced.

Senator CRANSTON. Thank you very much. Senator Williams, I take it from what Senator Javits stated, he wanted to have another hearing continuing this?

The CHAIRMAN. Yes. We can work that out for next Wednesday.

Senator CRANSTON. I think it is helpful.

Mr. MARLAND. Is this a continuation of this hearing, or a general review of the Office of Education affairs?

The CHAIRMAN. That will be a separate hearing.

Senator SCHWEIKER. I think Senator Javits asked for a separate hearing.

The CHAIRMAN. But it will be in the next week.

Mr. MARLAND. Let me be sure I understand. I told Senator Javits that I would be available, and I assume now that that is a separate hearing.

The CHAIRMAN. That is a separate oversight hearing. That will not be the nomination hearing.

Mr. MARLAND. I understand.

The CHAIRMAN. Senator Schweiker?

Senator SCHWEIKER. Thank you, Mr. Chairman.

Commissioner, first, I want to compliment you and the administration for your help in the aftermath of tropical storm Agnes, particularly to the private and public colleges, for your response given there, and also to the elementary and secondary schools.

I was a cosponsor of the bill there, and I think the administration responded very generously and very promptly, but there still seems to be one loophole I would like to see plugged up in this situation.

We made a visit to the Wilkes-Barre area after the flood, and I would like to quote a paragraph or two from the Times Leader in Wilkes-Barre.

(The article referred to follows:)

[From the Times-Leader, Evening News, Record, Wilkes-Barre, Pa., Aug. 17, 1972]

U.S. EDUCATION CHIEF SAYS CASH DUE STUDENTS

WILKES-BARRE—The U.S. commissioner of education Wednesday promised cash, not loans, to college students from flood-ravaged families "to make sure they don't drop out" of school.

"We want them in college," said Dr. Sidney P. Marland. "These students shouldn't fold up or be in despair, just because this terrible disaster has ripped their families."

He said grants of up to \$1,400 would be available to cover tuition, board and books, and that efforts also would be made to get them campus jobs.

"I don't say a student will get all that he's asked, but we are trying to avoid quarreling because I suspect that the student and his family have enough borrowing already."

At the same time, Marland told newsmen—as part of President Nixon's new effort to keep victims of flood relief informed of all activities—that the federal government expects to spend nearly \$70 million in the hard-hit Wyoming Valley to make sure that all schools "open up swiftly for the fall term."

He said cash is going to public schools, to parochial and private elementary and high schools, to colleges, and to replace wrecked public librarians.

"We're in a crisis phase to restore the total educational system," Marland said, emphasizing that grants to parochial schools "will include money for all materials short of that used strictly for religious instruction."

He said his department already has ordered 165 mobile classrooms costing \$5.4 million, that will be in place by the middle of the fall to house approximately 5,400 students.

"Yes, there will be double sessions at the opening of classes next month," he added, "But this problem will be quickly alleviated."

"And nowhere do we expect openings to be delayed more than three weeks. We are working fast."

There are approximately 40,000 parochial and public schools children in the Wyoming Valley, and around 8,000 students in Wilkes, Kings, Misericordia and Luzerne County Community colleges.

Marland acknowledged that in this type of crash program, "there is a chance for fraud, but we're trying to be hardnosed, to make sure the schools get only the funds they are entitled to and not any more."

Carlucci, who came in as Nixon's trouble shooter to cool down complaints and get some 10,000 homeless families into temporary housing, said he believes relief activity is speeding up.

He declined comment on whether the disaster, and how it has been handled, would become an issue in the presidential campaign.

Sen. George McGovern, the Democratic presidential nominee, is scheduled to tour Wilkes-Barre next Monday.

"I am not a political figure," Carlucci said, "I'm here just to smooth out problems."

And Carlucci, short, suave and a modish dresser who was once a resident of the valley, is doing exactly that. He met privately with 41 disgruntled residents Monday and reported on Wednesday he had already settled their problems, and that his staff was working on complaints from 16 others Tuesday.

He showed a flare for public relations by handing over a check for \$5,000 to Mrs. Sarah Williams of Kingston, the first issued by the Small Business Administration under the new disaster assistance law.

Senator SCHWEIKER. Of course, you went to implement that concept. Unfortunately, this is a considerable loophole.

I have a letter from a lady that used to live in Kingston, but now temporarily is housed elsewhere.

I will read this letter, and insert it in the record.

(The letter referred to follows:)

SCRANTON, PA., August 28, 1972.

HON. RICHARD SCHWEIKER,
Senate Office Building,
Washington, D.C.

DEAR SENATOR SCHWEIKER: I am writing concerning the federal grants of up to \$1,400 each for college students whose families were victims of the Agnes disaster, as mentioned by Dr. Sidney Marland of the H.E.W. Department in an article appearing in the August 17 issue of the Times Leader, a copy of which is enclosed.

Our son Martin is enrolled as a Freshman at Rutgers University in New Jersey and immediately after reading this article, I telephoned Mr. Richmond, the Financial Aid Officer at Rutgers. At that time, Mr. Richmond was totally unaware of the existence of such a program, but he contacted H.E.W. in Washington following my call to him and was informed that the funds are being allocated only in this program to 14 select colleges in Pennsylvania.

It seems strange that this policy was instituted by press release only and not by any written general directive to all colleges so that they could obtain grants for their flood affected students. It would appear that Dr. Marland deliberately used a grandstand play to obtain publicity for his department. He did not mention the narrow limitations of distributing the grants only to 14 select schools and thereby aroused false hopes in the hearts of many, many college students and their parents who are similarly affected by the disaster but to whom the financial assistance apparently is not applicable. To those of us whose hopes had been raised and then struck down, this amounts to a cruel and sickening trick.

We are among those who suffered severe damage from the horrendous effects of the flood, as our home was almost completely devastated, our business also flood-damaged and our resources consumed. In view of the financial and other stresses of the circumstances, our son may not be able to attend college without federal aid. It is grossly unfair to penalize the equally-affected students who are not enrolled in one of the 14 select Pennsylvania colleges. Our losses and our trauma are just as great, but our hopes that our children may go on for a higher education are being given a lesser priority, if indeed they will be given any consideration at all in this area.

Knowing full well your outstanding record as a Congressman who had dedicated himself completely to the service of his constituents (and being a member of that constituency that holds you in the greatest regard and admiration), I am making this desperate appeal to you to do all in your considerable power to rectify this situation and equalize the support for those other needy students who were also affected by the flood, in order to enable them too to continue their education rather than being forced to become drop-outs.

As our home at 361 Rutter Avenue in Kingston cannot be lived in at this time, we are temporarily residing at 502 Adams Avenue, Scranton. I hope I will hear from you in the very near future with a favorable resolution to this problem.

Most sincerely yours,

BETTY YUDKOWITZ
Mrs. Louis Yudkowitz.

Senator SCHWEIKER. I might say this is just another illustration of Pennsylvania money going over to New Jersey, on my earlier point.

Apparently what the problem is, you have set up a program to operate 14 colleges which themselves were affected by the flood, which obviously solved one aspect, but a number of the students go to other Pennsylvania colleges, or colleges in New Jersey, and are so affected, and I was wondering if it would be possible to set up some kind of special program to help out these people, and not make it just depend on which college you are attending, even though they are victims of flood.

I think possibly you should designate this in your Department, to give them some kind of special consideration, so that the students seeing the financial director at Rutgers will not get a turndown, and the aid officer will know what aid the boy is talking about.

Mr. MARLAND. Can you give me the date of that letter, Senator Schweiker?

Senator SCHWEIKER. The date of the letter, it is August 28.

Mr. MARLAND. Well, I think that since that date corrective measures have been initiated along the following lines:

We still have to obviously administer these authorities by law, and in terms of family income, to determine whether a student is eligible for a grant.

Now, the laws does not change, but we have extended ourselves, especially in the stricter areas, to target resources into those areas, drawing them from other places.

We recovered \$3 million for example in the late summer from other States, and put it into the Agnes States.

In mid-September, about 2 weeks ago, the Deputy Commissioner for Higher Education wrote to all student aid offices in the United States calling attention to the victims of Agnes, and saying that we want special attention given to the needs of these students, and to see if they could do something to give attention to this.

Senator SCHWEIKER. What was the date of that letter?

Mr. MARLAND. I can get you a copy of it.

Senator SCHWEIKER. So you are ready to give them some primary consideration?

Mr. MARLAND. If it is within the law, yes. It may be a family, and it may be that they do not qualify.

Senator SCHWEIKER. Right, but if they do qualify, you are ready to do all you can?

Mr. MARLAND. We say this calls for an exceptional effort by the student aid officer.

Senator SCHWEIKER. I think that would be very helpful, and that should solve the problem.

The other thing is, is there enough money in the pipeline to do this? Of course, we are talking about some supplemental money in a supplemental bill that is coming before us very soon.

Mr. MARLAND. In the short answer, probably no. We would not be able to do all we would like to do. As I said, we did recoup money in fiscal 1972, and targeted it into the Agnes area, \$3 million.

As for fiscal 1973, under which we are waiting for a budget, both the supplemental budget, and our recent budget, those resources will be available under the same conditions they are now to the Agnes flood victims, and we would give special concern to them, and still act within the terms of the law.

Senator SCHWEIKER. Would these people, say at Rutgers and other colleges, would they get the same kind of assistance if a flood victim went to one of the 14 earmarked colleges?

Mr. MARLAND. We are asking that the local offices give priority to them.

We are not giving more money necessarily, as I had answered Senator Cranston. I cannot predict what the supplemental budget will be for economic opportunity grants or for work-study.

We will probably push for work-study with what resources we have, and such resources we have for the new BOG program, and that will be targeted to families with needs.

Senator SCHWEIKER. The 14 colleges you have targeted, they are getting this form of help?

Mr. MARLAND. Up to according to the law.

Senator SCHWEIKER. Well, then, are the others also getting that aid?

Mr. MARLAND. Where there has been a family that has in one way or another suffered substantial economic damage, their condition might be quite different in September of 1972 from what it was in September 1971. Therefore, student aid officers are asked to consider the circumstances of those families, to see if they do qualify, and some may because of the Agnes disaster.

Senator SCHWEIKER. Do I understand if a student were to go out of the State, that he would get the same kind of treatment, assuming there is money available?

Mr. MARLAND. If there is money available, he would.

I do not want to overstate the money available. There will be substantially new increases in our higher education student aid funding, substantial new increases above last year's level, and we are asking student aid officers to give special attention to the uses of those moneys for any student anywhere, if he came from a stricken area.

Senator SCHWEIKER. That is all I have, Mr. Chairman.

I thank you very much, Commissioner.

The CHAIRMAN. I have some questions dealing with the expanded community college program, Commissioner. I will put these to you in writing, and I take it you will be ready for next week to answer them. I would appreciate that.

On the busing question, I would appreciate your viewpoint on the House-passed bill. I know you have not been commissioned to give the administration's position, but if you could, we would appreciate an answer from an educator's point of view. As the Commissioner of Edu-

cation, I would hope you would address yourself to your evaluation of the impact on education of the provisions of that House-passed bill and its impact on school desegregation.

Mr. MARLAND. Do you want me to respond to that now or in writing?

The CHAIRMAN. I think because of the late hour, we had better have that in writing, and we could have it next week.

There is nothing further at this hearing for you.

Chairman Perkins on the House side asked me to include in this record a letter from him addressed to me for this nomination hearing, and I think we will have a copy for you. I have not yet read it, so that will be available for next Wednesday afternoon.

(The letter referred to follows:)

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CONGRESS OF THE UNITED STATES
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 2181 RAYBURN HOUSE OFFICE BUILDING
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September 19, 1972

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Honorable Harrison Williams
 Chairman
 Committee on Labor and Public Welfare
 United States Senate
 Washington, D.C.

Dear Mr. Chairman:

It has come to my attention that certain questions have been raised with regard to the newly created position of Assistant Secretary for Education during your consideration of Commissioner Marland's nomination for this position. I understand further that some questions have been raised with respect to legislative intent and that certain of my comments from debate in the House on the Conference Report on the Omnibus Education Amendments have become involved in the discussion. I am writing you in the hope that I might be able to provide additional clarification with respect to these matters.

I have reviewed very carefully all of the legislative history relating to the establishment of the Office of the Assistant Secretary, including the detailed minutes of our Conference proceedings. Based on this review, in my judgment it is clear that in creating the Office of the Assistant Secretary, the Conferees did not intend nor did they anticipate the establishment of another layer of bureaucracy in the Federal education structure. It is clear as well that we intended that the National Institute of Education have a high degree of independence and that policy formulation for the Institute be vested in a non-political council.

It is also clear that we did not intend to decrease the status or powers of the Office of Education.

Let us deal with the first point. It must be obvious that the legislative history in the House on S. 659 is not as specific with regard to the position of education in the Executive Branch as was the case in the Senate. The reason is clear: the House bill did not, as did the Senate bill, provide for the establishment of an Education Division in HEW, so there was no need for such specific history.

I must point out, however, that one of the reasons the House Committee on Education and Labor refused to approve the Administration's proposal to create a National Foundation for Postsecondary Education was our concern that the establishment of such a Foundation might downgrade the Office of Education. The position of the Office of Education in the Federal structure is a matter of deep and continuing concern to me personally and to Members of the House Committee.

So while, to repeat, the legislative history on the status of education in the Executive Branch is not as specific in the House bill as in the Senate bill, what is clear is that the Conferees intended that the Assistant Secretary serve as the chief spokesman and advocate for education in the Executive Branch.

My own Floor statement on the Conference Report, Senator Pell's statement, Senator Kennedy's statement-- all support this intention to elevate this spokesman-advocate role. However, consistent with the concerns I have already mentioned, this objective is to be achieved without downgrading the present Office of Education or impairing the independence of the National Institute of Education.

As evidence of its determination on this matter, the House refused to accept the Senate provision which would have transferred functions, responsibilities, and authorities from the Commissioner of Education to the head of the Education Division. While creating the new position of high level advocate and spokesman for education, the Conference Report not only did not include the Senate's transfer provisions, but it also reaffirmed the full authority and responsibility of the Commissioner of Education, and made clear the independence of the Institute.

These observations are obviously related to the clear desire of the Conferees not to create another bureaucracy. You will recall that the Senate version of S. 659 authorized the position of a Presidentially appointed Deputy Commissioner of Education. The Senate receded on this matter. The Senate bill also created six GS-18 positions, presumably for the new division. In the face of adamant House opposition, the Senate receded on this proposal also.

Taking into account these actions of the Conference as well as the clear intent of the Conferees that there be no superstructure or additional bureaucracy, I am disturbed by reports that the Department intends to create 99 positions in the Office of the Assistant Secretary. So large an office is, in my opinion, directly contrary to the intention of the Conferees who, to reiterate, did not wish to create a large new layer of bureaucracy. Obviously, the appointment of 99 assistants for the Assistant Secretary is a giant step toward creating precisely the kind of bureaucratic tangle the Conference sought to avoid. I would add that the Conferees unequivocally declared that the Assistant Secretary should not have policy responsibility for either the Institute or the Office of Education, thus 99 positions are clearly not needed in the office of the Assistant Secretary.

Finally, and in my judgment most important, let me discuss the relationship of the Assistant Secretary to the National Institute of Education. I believe the action of the Conference Committee in and of itself defines clearly this relationship. You will recall that the Senate bill, with respect to the National Institute of Education, provided for a Director and a National Council on Educational Research, responsible for general policies with respect to powers, duties and authorities of the Institute. The House bill also established the position of Director and a Council. However, in the House amendment, the Council was purely advisory in nature. The Conference agreement contains the Senate provision, thus establishing a National Council responsible for general policies related to the powers, duties and authorities of the Institute. May I quote from the Statement of the Managers:

"The Conferees believe that both an independent council with decision-making authority and a strong directorship are needed to lead a vigorous Institute....The Council would establish overall policies leaving to the director decisions about programs, initiatives and funding."

Section 405 of the General Education Provisions Act places authority for making policies for the National Institute of Education in the National Council. Under Section 405, responsibility for administration of the Institute is vested in the Director. In my Floor statement, I noted

that the Director of NIE would report to the Assistant Secretary for Education. This is consistent with Section 405(d)(1) of the General Education Provisions Act which states:

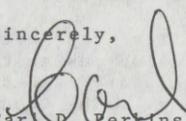
"The Director shall be responsible to the Assistant Secretary and shall report to the Secretary through the Assistant Secretary and not to or through any other officer of the Department of Health, Education and Welfare."

In approving this provision, however, at no time did the Conferees intend to place the Institute under the control of the Assistant Secretary. The provision simply describes the administrative line of authority to be followed within the Department and does not relate to policy formulation. To interpret the provision more broadly would thus be in direct conflict with the clear intent of the Conferees that general policy for the Institute be determined by the Council.

The Conference agreement incorporated the Senate amendments in this regard and affirms the intent, as expressed in the Senate Committee Report that (1) the Council be a fully autonomous and independent body, (2) that it set general policy guidelines and continually review the conduct of the Institute and (3) that it be active in determining the direction and monitoring performance of the new Institute.

I trust that these comments will be helpful to you in your deliberations.

Sincerely,

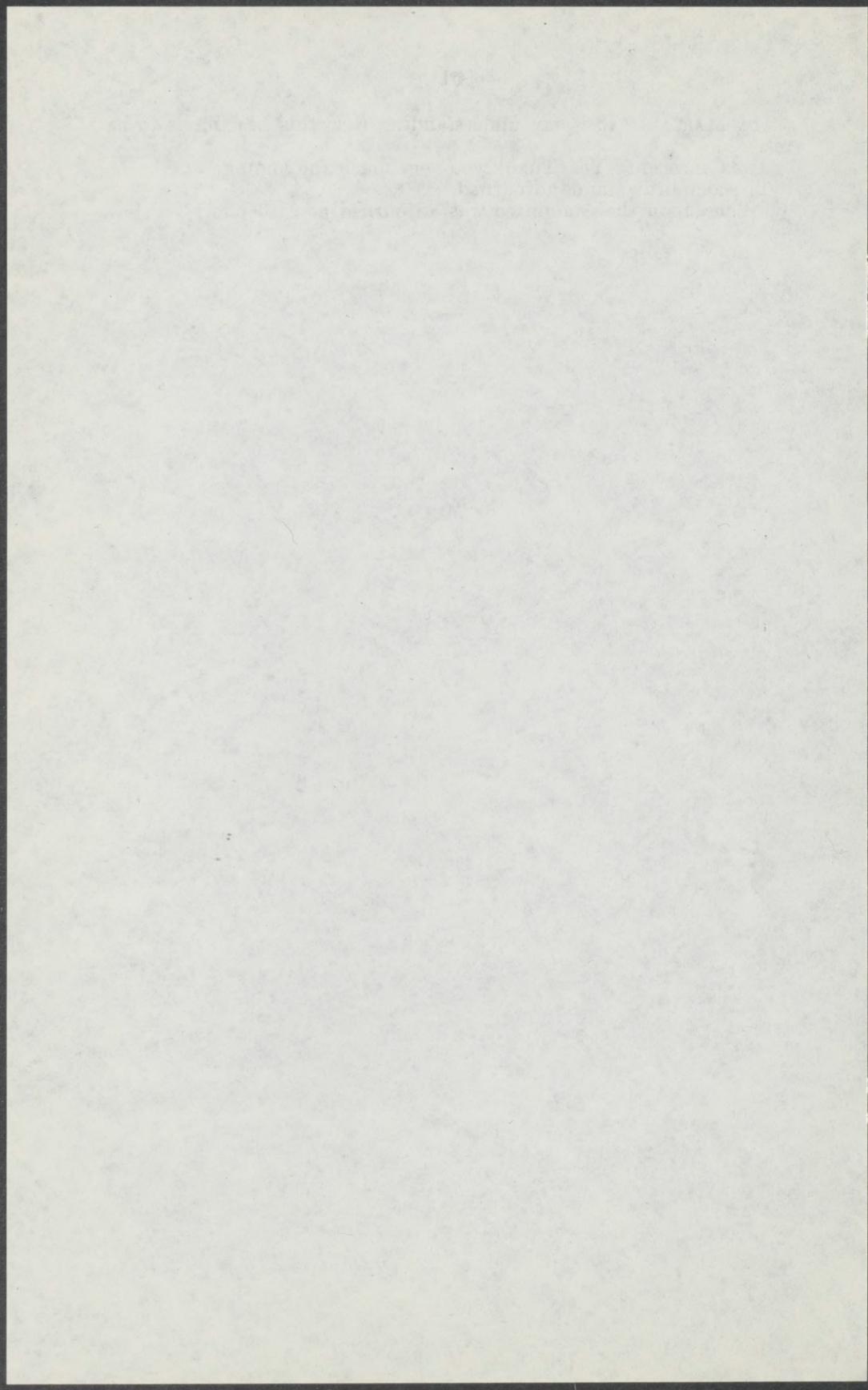

Carl D. Perkins
Chairman
Committee on Education
and Labor

Mr. MARLAND. It is my understanding that this hearing is to be recessed.

The CHAIRMAN. Yes. Thank you very much for coming.

The committee stands adjourned.

(Whereupon the committee was adjourned at 2:10 p.m.)



NOMINATION

SEPTEMBER 27, 1972

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The committee met, pursuant to recess, at 2 p.m., in room 4232, New Senate Office Building, Hon. Harrison A. Williams, Jr., chairman, presiding.

Present: Senators Williams, Javits, and Dominick.

Committee staff present: Stewart E. McClure, staff director; Robert E. Nagle, general counsel; and Roy H. Millenson, minority staff director.

The CHAIRMAN. We are ready to convene this nomination hearing of Sidney P. Marland.

Representative John Brademas will be our first witness this afternoon.

Congressman Brademas is a member of the House Education and Labor Committee, and one of its most productive contributors.

We appreciate your being here with us on this nomination hearing.

MR. BRADEMAS. Thank you very much, Mr. Chairman. I am grateful to be here.

As I sit here this afternoon, I cannot help reflecting on those many long hours and weeks we spent in conference earlier this year with the distinguished members of this committee on what will become one of the most significant pieces of education legislation Congress has ever passed, the Education Amendments of 1972.

Mr. Chairman, I will now read my prepared statement, and ask that it be inserted in the record.

The CHAIRMAN. The statement will be inserted at this point.

STATEMENT OF HON. JOHN BRADEMAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

MR. BRADEMAS. Mr. Chairman, members of the committee, let me begin by expressing my appreciation for this opportunity to appear before you on the matter of the position of Assistant Secretary for Education.

Although I realize that it is somewhat unusual for a Member of the House to testify before this committee on a Presidential nomination, I requested this opportunity because I believe it is important that Congress reaffirm at this time the prerogatives and the authority residing in the position of Assistant Secretary of Education as head of the Education Division that was created by S. 659, the Education Amendments of 1972.

I come before you today, Mr. Chairman, not as a Democrat or a Republican but rather as a Member of Congress.

As you know, Mr. Chairman, I applauded President Nixon's initiative in proposing the National Institute of Education, was principal House sponsor of the legislation authorizing it, conducted lengthy hearings on it in the Education Subcommittee I have the honor to chair, and defended the proposal through conference and through final passage in the House.

Moreover, together with my distinguished colleagues, Chairman Perkins of Kentucky, Congressman Thompson of New Jersey and Congressman Quie of Minnesota, the ranking Republican on the House Committee on Education and Labor, I worked for a number of the provisions in the legislation in the higher education title of the new law that were supported strongly by the administration, particularly the institutional aid feature.

So I reiterate that I appear before you not as a partisan but as a legislator concerned with education, and still more to the point, as a Member of Congress concerned with the role of Congress in making public policy in our constitutional system.

What is at issue, therefore—the matter of the confirmation of the new Assistant Secretary of Education—goes beyond Federal policy for education.

The issue is rather one of the basic constitutional process in our country, a process which allocates authority to Congress to pass legislation and to the executive branch the authority to administer legislation, in compliance with the intent of Congress.

So I am not here to oppose the confirmation of Commissioner Marland, who is a friend of mine and a man for whom I have high regard, but rather to speak to an issue which must be of grave concern to members of this great committee and of my own committee and, indeed, to all of us elected to either body of Congress.

For unless there is adequate attention in Congress and unless adequate precautions are taken, I fear the Senate may confirm as Assistant Secretary of Health, Education, and Welfare for Education a nominee who shows little evidence of understanding the clear intent of Congress with respect to the position which he is seeking and who, if he does understand the intent of Congress, plans to ignore it.

Let me then review the matter of the intent of Congress with respect to the new position of Assistant Secretary for Education.

In doing so, I shall make a few initial observations.

First, the position of the Assistant Secretary for Education and the Education Division of the Department of Health, Education, and Welfare were created by an agreement in the conference on S. 659. The administration made no proposal whatsoever with respect to an Assistant Secretary of Education nor did the administration express any opinion whatsoever on the functions of the new position. The Assistant Secretary's position and its authority were the creation of the conference—a compromise between substantially different House and Senate provisions with respect to the hierarchy of the Department of Health, Education, and Welfare in education.

Second, the conferees intended that as head of the Education Division, the Assistant Secretary be a spokesman-advocate for education within the executive branch but did not intend that the Assistant Secretary have authority to formulate policy for education.

My third observation must be that the nominee for the position of Assistant Secretary does not agree with the conference agreement on S. 659, now Public Law 92-318. From written documents available to both our committees and from conversations I have myself had with the present Commissioner, I now realize that he does not intend to carry out the provision of the public law but intends rather to implement language specifically rejected by the conferees and therefore by Congress.

Fourth, Mr. Chairman, I must observe that this particular nominee is no stranger to us. We have had an opportunity to observe his stewardship as Commissioner of Education. The record of the Office of Education during this time surely ought to be most carefully considered.

Now, Mr. Chairman, let me address myself more specifically to the points I have enumerated.

First, with respect to the intent of the conferees on the Division of Education and the position of Assistant Secretary for Education, I think it is essential that we recall the differences in the House and Senate provisions creating the Division and the position as well as the actual agreement, which, of course, is what is now law.

The conference records as well as the language of the conference report itself show that the Senate version of S. 659 provided for an Education Division within the Department of Health, Education, and Welfare to be headed by a Commissioner of Education, whose functions would be expanded beyond those held by the present Commissioner. In the Senate version, both the present Office of Education and the new National Institute of Education would have been contained within the Education Division.

The House version of S. 659, on the other hand, provided only for a new, independent National Institute of Education but not for a new Division of Education headed by a Commissioner with expanded functions.

In resolving these differences on organization, the House adamantly refused to recede to the Senate version, for two primary reasons:

First, the proposed new and expanded Office of the Commissioner would have controlled the National Institute of Education and thereby would have impaired the independence of the Institute; and second, the House conferees were opposed to the creation of a new layer of Government bureaucracy in education.

The Senate conferees, however, made clear that, even in their version of the bill, they, too, had no intent to allow their new and expanded Commissioner to have policy control over the National Institute of Education. The Senate conferees pointed out that their version of the National Institute of Education provided rather for a National Council on Education Research which would have policymaking authority for the Institute and that in this fashion its independence from control by the proposed new Commissioner would be assured.

The Senate conferees made clear that in vesting policy authority in the National Council, they intended to insure that no other officer of the Department of Health, Education, and Welfare should have policy control of the Institute.

Mr. Chairman, these differences between the Senate and House conferees were resolved by the following compromise, which is now the law of the land.

First, they agreed that there would be created an Education Division headed not by a Commissioner with expanded powers but rather by an Assistant Secretary for Education, who would act only as a spokesman-advocate for education but not as a policymaker for the Office of Education and the National Institute of Education.

This agreement, I must stress, was chiefly taken as a result of the conferees' insistence that (a) there not be a new layer of bureaucracy within the Federal effort in education; (b) that the independence of the Institute not be diluted; and (c) that the policymaking authority of the Office of Education not be diminished.

In this last respect, the conferees agreed that although the new Assistant Secretary was the chief spokesman for education at the Federal level, the present policymaking authority of the Commissioner under existing law would remain unchanged. In this connection, I must point out that the Senate bill contained a provision transferring policymaking authority from the Office of Education to the new Division. The conference explicitly rejected this provision.

I believe, Mr. Chairman, that in understanding the intent of the conferees with respect to the role of the Assistant Secretary, it is particularly significant that this transfer provision in the Senate bill was rejected.

Mr. Chairman, in a letter to you of September 19, 1972, the distinguished chairman of the House Committee on Education and Labor, Mr. Perkins, declared:

I have reviewed very carefully all of the legislative history relating to the establishment of the Office of the Assistant Secretary, including the detailed minutes of our conference proceedings. Based on this review, in my judgment it is clear that in creating the Office of the Assistant Secretary, the conferees did not intend nor did they anticipate the establishment of another layer of bureaucracy in the Federal education structure. It is clear as well that we intended that the National Institute of Education have a high degree of independence and that policy formulation for the Institute be vested in a non-political council.

It is also clear that we did not intend to decrease the status or powers of the Office of Education.

More specifically still, I should refer to section 405(d)(1) of the General Education Provisions Act, which states:

The Director shall be responsible to the Assistant Secretary and shall report to the Secretary through the Assistant Secretary and not to or through any other officer of the Department of Health, Education, and Welfare.

On this point Chairman Perkins said:

In approving this provision, however, at no time did the conferees intend to place the Institute under the control of the Assistant Secretary. The provision simply describes the administrative line of authority to be followed within the Department and does not relate to policy formulation. To interpret the provision more broadly would thus be in direct conflict with the clear intent of the conferees that general policy for the Institute be determined by the Council.

Mr. Chairman, the history of the conference compromise which I have outlined is not something which we in the House have made up out of whole cloth, for the Senate conferees clearly agreed with the interpretation which I have given to you. I must here quote the distinguished Senator from Rhode Island, Senator Pell, chairman of the Senate Education Subcommittee and floor manager of S. 659, whose patience and leadership enabled the conferees to settle their differences with dispatch and without acrimony. Senator Pell made the following ex-

planatory statement on the floor during Senate consideration of the conference report on S. 659 :

Within the Education Division there are two agencies : the Office of Education headed by the Commissioner of Education, and the National Institute of Education headed by the Director of the Institute. The National Institute of Education is also under the governance of the National Council on Education Research, which is charged with the responsibility for setting general policy for the Institute. That National Council also has an advisory function for the Department of Health, Education, and Welfare with respect to education.

It is not intended that the newly established Assistant Secretary have any administrative responsibilities except for those related to the emergency school assistance program. The primary responsibility for education programs continues to be vested in the Commissioner of Education. Nor is there any intention on the part of the conferees to elevate any responsibilities now carried on in the Office of Education to the Assistant Secretary.

Clearly Senator Pell and Mr. Perkins, who chaired the Senate and House conferees, respectively, and who managed the legislation on the floor in their respective bodies, are in agreement on this matter.

Mr. Chairman, let me now turn to my next observation—the contrast between the intent of the conferees with respect to the position of Assistant Secretary and the intent of the nominee for this position. In stating his views before this committee last week, the nominee said :

. . . the Assistant Secretary will now be the chief officer responsible for the overall direction of both the Office of Education and the National Institute of Education.

And he continued :

. . . the Assistant Secretary is responsible for developing and providing over-all policy direction for both education agencies.

I think it is clear, Mr. Chairman, that the views of the nominee, the present Commissioner of Education, on the authority Congress vested in the position of Assistant Secretary of Education are at odds with the views of the conferees and the intent of Congress.

I would be derelict, Mr. Chairman, if I did not also point out that the nominee has already announced plans to staff the Office of the Assistant Secretary with 99 or 100 assistants, a plan in clear violation of the conferees' opposition to adding another bureaucratic layer to the Federal effort in education.

Given the limited functions delineated for the Assistant Secretary in S. 659—facilitating communications between the Secretary and the Office of Education and the Institute and administering the emergency school aid program—one may be forgiven for wondering why the new office requires so many employees.

The answer, of course, is that the nominee has no intention of restricting his functions to those authorized in the enacting legislation.

Surely, we in Congress must ask this crucial question : Who is to formulate Federal policy for education ? The agency vested with that responsibility by the Congress of the United States ? Or an office given no statutory authority—with one exception, the emergency school aid program—to make policy by the authorizing legislation ?

It must be obvious then, Mr. Chairman, that the nominee for Assistant Secretary of Education disagrees with the law and the intent of Congress on the authority of his position.

In this situation, I say to the distinguished members of this committee, the law controls, and the intent of Congress is quite clear to those of us who wrote the conference agreement.

Mr. Chairman, I said earlier that the record of the nominee for the position of Assistant Secretary should be taken into consideration in these confirmation hearings.

I wish to reiterate that my concern here is in no way motivated by any personal prejudice against the nominee or any political bias.

My concern is rather with the place of Congress in the writing of the Nation's laws. For it is Congress that is charged with the responsibility of considering and acting on legislation and the executive branch of government that is charged with the responsibility of administering the laws in conformity with congressional intent, even when, as is sometimes the case, especially with a separation of powers Constitution like ours, the executive branch may not agree with the laws Congress passed.

One way to understand the attitude of the nominee toward carrying out the laws in accordance with the intent of Congress is to look to his stewardship as Commissioner of Education.

I could cite a litany of complaints but let me give you only a few examples.

In 1970 Congress passed the Environmental Education Act with overwhelming bipartisan support in both bodies. Although the law mandated the establishment of an Office of Environmental Education within the Office of Education and the appointment of an advisory council with significant powers, 1 year after the President had signed the bill into law the Commissioner had failed to comply with this statutory mandate. The will of Congress was simply ignored.

Even now after two oversight hearings of the House subcommittee, with jurisdiction over the program, the Office of Education is failing to comply with congressional intent in assuring that the advisory committee is carrying out functions required of it by law.

Second, Mr. Chairman, as you recall, when Mr. Marland appeared before this committee as the nominee for Commissioner of Education, he promised that he would follow the law and maintain the Teacher Corps as a program reporting directly to the Commissioner.

Almost immediately the Commissioner violated the intent of the law and his own promise by dropping the Teacher Corps three layers down in the bureaucracy. Congress was compelled to correct this situation with an amendment in S. 659 prohibiting the Commissioner from continuing that organizational pattern.

Members of this committee will also remember something called the renewal strategy which the Commissioner attempted to implement without adequate authorizing legislation and, indeed, in the face of vigorous opposition to his attempt in both the House and the Senate.

Let me cite the most recent instance of this apparently continuing pattern of the Commissioner's hostility to the intent of the elected Members of the Senate and House of the U.S. Congress.

As the committee will recall, in writing S. 659, we intended that students with adjusted family incomes below \$15,000 continue to enjoy a presumption of eligibility for participation in the federally subsidized student loan program, while students with adjusted family incomes in excess of that amount would have first to show need in order to be considered for a loan.

In order to underline this distinction, we even wrote two separate eligibility sections in the law, one for students with adjusted family

incomes below \$15,000, and another for students with adjusted family incomes above \$15,000.

The Office of Education, however, announced that it was unable to perceive any difference between the requirements applicable to these two classes of students, and proceeded to issue regulations making all applicants for Federal interest benefits subject to the same eligibility standards, regardless of adjusted family income.

This development, of course, caused great concern among the members of both this committee and the Committee on Education and Labor of the House, and several of us subsequently sent the Commissioner a joint letter explaining our intent in considerable detail.

Yet lawyers for the Office of Education remained either unable or unwilling to apprehend the obvious meaning of the statute, and finally, Congress had to suspend the effective date of the new provisions in order to avert a nationwide collapse of the subsidized loan program.

So it seems to me clear, Mr. Chairman, if I may state the matter bluntly, that unless the Commissioner is told explicitly what he can and cannot do, he will do whatever he pleases without regard to or respect for the intent of the Congress of the United States.

For unless told explicitly what he is authorized to do, he has made clear that he intends to go his own way as though he, and not we here in the Congress of the United States, were authorized to pass the laws of the land.

Mr. Chairman, we cannot continue to accept this cavalier disregard for the intent of Congress, for following congressional mandates is not a question of doing Congress a favor; it is a matter of obeying the law.

And let me stress once again to the members of this great committee that my complaint does not arise from personal pique or wounded pride, but from a deep concern with the fundamental processes of government in this country and with the proper place of Congress in our constitutional system, whether a Democrat or a Republican is in the White House.

Our Constitution vested Congress with the authority to make the laws and the executive branch with the authority to carry them out.

We in Congress must not ignore our responsibility, for to do so makes a mockery of our constitutional processes, and only further erodes our own authority to meet our responsibility.

Mr. Chairman, the outlook and the actions of the first Assistant Secretary for Education will give important shape to the future of that position in our government. Let us make sure that the die is cast in accord with congressional intent.

Let me say once more that I do not speak here in opposition to the confirmation of Mr. Marland.

I have no quarrel with his confirmation to the position of Assistant Secretary—as Congress intended and designed that position. I would, however, be disappointed if he were to be confirmed with a blank check to turn the position into whatever he—and not Congress—decides it should be.

It is for this reason that I hope this great committee, if it decides to recommend confirmation of the nominee, will make clear the duties and the authority of the Assistant Secretary as well as the limits on those duties and authority.

I thank you, Mr. Chairman, and members of the committee, and I would be pleased to respond to any questions that any member of the committee may wish to put to me.

The CHAIRMAN. We thank you very much for your statement, and for your exposition or your views of the role of Assistant Secretary.

Broadly, you suggest the position be viewed as an advocate for education. Would you be a little more specific as to how you interpret the congressional view of just what the Assistant Secretary would do?

Mr. BRADEMAs. I think the statute itself makes clear, Mr. Chairman, two responsibilities. One is the administration of the emergency school aid program, and the other is, through the reporting function, to maintain communications between the Secretary and the Office of Education.

Now, had Congress intended that the Assistant Secretary have the considerable policymaking authority which he is now representing he should have we need not have singled out a specific program and written into the statute authority for the Assistant Secretary to administer that program.

The CHAIRMAN. Senator Cranston.

Senator CRANSTON. I thank you for the opportunity to speak. Very briefly, I have to leave for another conference on my schedule.

I want to thank you, Congressman Brademas, for appearing before us to express your insight on American education.

I thank you for your effort on that renewal site matter.

I think it is appropriate to have conferences with House Members on matters that we work together on. I do feel, if the committee recommends a confirmation of Commissioner Marland, the Congressman said he respected Commissioner Marland highly. I believe if there is confirmation, the position's scope should be spelled out in full terms. I think it will save ourselves, Dr. Marland, HEW, Congress, and educators throughout the country a tremendous, a great deal of effort, time, and misunderstanding.

That is a step I would like to take.

Mr. BRADEMAs. If I may respond to what the distinguished Senator from California has said, I agree with his position. I think it would be tragic if a piece of legislation like the Education Amendments of 1972, put together by both the Senate and House, were to fall on evil days because of the kind of concern I have been trying to express.

With respect to what the Senator from California has just said in terms of making more specific the duties, and limitations on those duties, of the new Assistant Secretary, I totally agree, and hope the committee gives attention to that problem.

I imagine it might become necessary down the road for the Appropriations Committee to give voice to its concern.

With respect to the renewal strategy the Senator mentioned, that is a case study I have mentioned.

The Commissioner was seeking, under the name, "Renewal," to carry out programs not authorized by Congress.

My position is that programs ought to be established according to the processes of our Constitution for making law.

I should not offer an advertisement for myself, but I wrote an essay on this, on "Congress in the year 2000," a few years ago. By the year 2000, I think, there will still be a Congress, and there ought to be,

regardless of whether there is a Democrat or Republican in the White House. And if there is not, the country will be in a lot of trouble.

Senator CRANSTON. Senator Javits.

MEANING OF STATUTE

Senator JAVITS. Mr. Chairman, I too am grateful that Mr. Brademas, a distinguished Member of the House, and an old friend, has seen fit to come here and give us his views as to how he feels about Dr. Marland. With respect to any view we adopt, I am troubled by a few things. Perhaps together we can try to think them through. Would you agree that the statute itself is clear, that no matter what you might think we intend to say or any other legislator or Senator thinks we mean to say, if it is not clear, we are not bound by it unless it is amended.

Mr. BRADEMAs. It seems to me the question is whether the law read as a whole is clear. One must realize a position was created by the conferees, and a position which the administration voiced no opinion on, one way or the other. One must give far greater weight to the judgment of the Senators and Congressmen who wrote the statute, rather than to somebody downtown, who did not sit in through those deliberations, and who had no part in making a judgment on what the statute should be.

I certainly can understand that if I were appointed to the new Assistant Secretary's position, I would want all the power I could get my hands on, and I would like to have 100, 200, 400 people working for me if I thought I could get away with it.

I might so interpret the statute. I would like to think I would not. But, being human, I might interpret the statute as to what would mean the greatest powers for me, rather than thinking of the intentions of the legislators who framed the legislation.

Senator JAVITS. But if the mind of a man who is supposed to be a judge, and that's what you really are asking us to be, it seems clear, according to its wording, is not that individual intended to rely first and foremost on the wording, and is it not his duty to seek legislative intent in this case? If he considers the wording to be clear, is that not the way the court operates?

Mr. BRADEMAs. Of course it is, and I think if one looks at the words and the duties described, for example, for the National Council on Educational Research, one will see the clear wording of the Congressional intent, and will see that the authority for the general policies is vested not in the Commissioner of Education, but in the National Council.

Senator JAVITS. For its policy, not all policy. And if the Assistant Secretary, if we do confirm him, has jurisdiction over other policies, not just its policies with respect to education.

Mr. BRADEMAs. No, he does not. I do not know if the Senator was present at the time I made this observation, but the Senator made reference to a judge reading a statute.

The statute makes clear in which one area the Assistant Secretary is given policymaking authority and the statute spells out that one authority; namely, the emergency school aid program.

If it had been the intent of the conferees that the Assistant Secretary have authority for making policy and exercising administrative

authority across the whole ambit of education in the Federal Government, that singling out in the statute of one authority would obviously not have been necessary.

Senator JAVITS. When you say making policy, he does not make policy. He is the assistant. Is this not under the Secretary, and on that level he is not an autonomous officer; that is true, isn't it?

Mr. BRADEMAS. Correct.

Senator JAVITS. I am reading the language of the statute. That is greatly appreciated. That leads me to where you think we ought to be, it says, "section 402(b) the Assistant Secretary should be the principal officer in the Department to whom the Secretary shall assign responsibility for the direction and supervision of the Education Division. He shall not serve as Commissioner of Education or as Director of the National Institute of Education on either a temporary or permanent basis."

So I ask the question, what do you want us to say the words "responsibility for the direction and supervision of the Education Division" mean. Do they mean something different or something less?

Mr. BRADEMAS. One hesitates to say different from or less than. I think it is a great mistake to read one line in a statute and ignore other lines in the same statute. The statute must be read as a whole.

I will tell the Senator, as one who championed the National Institute through the House, that had I thought any effort would be made to give to some Assistant Secretary the authority to make policy over the National Institute, I would have vigorously opposed that proposal, and the chairman of the conferees was aware of my views, as were all the conferees on the House side.

This was not a partisan matter.

Again, I can appreciate the desire of appointed officials to interpret laws passed by Congress to enable them to hire as many people as they think they can get away with and to have as wide a range of authority as possible which I think is what this issue is all about.

But in doing so, they fly in the face of the history of the legislation, and in the face of the clear language in the statute that describes the policymaking authority within the NIE, and Office of Education.

For example, I may say to the Senator I am here looking at pages 202 and 203 of the conference report, "Duties of the Office of Education."

(The information referred to in the conference report follows:)

[From the Senate Conference Report 92-798, May 22, 1972; p. 202]

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

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Duties of the Office of Education.—The Senate amendment restated the purpose of the Office of Education and limited its authority to that expressly provided by statute and provided that "nothing in this section, or any other provision of law, shall be construed to grant the Office of Education any authority which is not expressly provided for by statute or implied therein." The House amendment contained no comparable provision. The House recedes with technical and clarifying amendments.

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Organization of the National Institute of Education.—The Senate amendment provided that the National Institute of Education shall consist of a Director and a National Council on Educational Research responsible for general policies

with respect to the powers, duties, and authorities of the Institute. The House amendment established a position of Director and a council which is advisory in nature. The House recedes.

The conference agreement adopted the Senate amendment which established a National Council on Education Research responsible for general policies related to the Institute's powers, duties and authorities. The conferees believe that both an independent Council with decision-making authority and a strong Directorship are needed to lead a vigorous Institute. It is intended that the Director of NIE have full responsibility for specific program policies and for the management of the Institute. The Council would establish overall policies leaving to the Director decisions about programs, initiatives, and funding.

During fiscal year 1973 the Council, along with the Director, will be developing policies and procedures for the NIE. To ensure continuity of programs previously operated by the OE, we expect the Director of the NIE during fiscal year 1973 to be responsible for providing direction and leadership to these programs and projects.

Mr. BRADEMAs. It was not proposed to give to the Assistant Secretary policymaking authority.

If you look at Mr. Marland's correspondence with Senator Pell, in two letters he has written to the Senator, you will see how, however, Mr. Marland at one point insisted he have the policymaking authority over NIE and OE.

The CHAIRMAN. Can you give us both of those?

Mr. BRADEMAs. Yes, in his letter of September 15 he says, and I am quoting from Mr. Marland's letter to Senator Pell:

"Authority for administering the Office of Education and most substantive education programs is vested by statute in the Commissioner of Education. Authority for administering other education programs has been delegated to the Commissioner pursuant to statute. Similarly, authority for making policy for, and for administering, the National Institute of Education and programs of educational research is vested by section 405 of the General Education Provisions Act in the National Council on Educational Research and the Director of the Institute, respectively.

"The plans outlined in my letter of August 15 to you would in no way disturb the locus of these functions. None of these programs will be administered by the Office of the Assistant Secretary. The Office of the Assistant Secretary will be staffed to carry out only two basic functions: (1), it will be the spokesman and advocate for education in the executive branch of the Federal Government, and (2), it will provide policy analysis and direction in the field of education."

Senator JAVITS. Is that all right, so far?

Mr. BRADEMAs. If we could leave it at that I would not have taken the time to trouble these distinguished Senators today.

Senator JAVITS. Then where do we go?

Mr. BRADEMAs. On page 2, the letter speaks of the General Education Provisions Act and states that the act gives to the Assistant Secretary ample authority to make broad policy for the Education Division.

Section 401 of the General Education Provisions Act establishes an Education Division *composed of* the Office of Education and the National Institute of Education and *headed by* the Assistant Secretary for Education. Section 402(b) of the General Education Provisions Act provides: "The Assistant Secretary shall be the principal officer in the Department to whom the Secretary shall assign *responsibility for the direction and supervision of the Education Division.*" [Italic sup-

plied.] Within HEW protocols, this implies accountability as well.

In our view, these provisions per se establish a line authority in the Assistant Secretary over the Commissioner of Education and over the Director and National Council on Educational Research which comprise the National Institute of Education. They give to the Assistant Secretary ample authority to make broad educational policy for the components of the Education Division. To deny this, we think, is to fail to give any content to this basic organizational structure or to the concepts of "direction" and "supervision" which express the Assistant Secretary's relationship to the Office of Education and the National Institute of Education.

So the Commissioner, in his response to Senator Pell, has put himself in an ambiguous situation.

Here, he realizes on one hand that in fact, the conferees were quite insistent on the autonomy of NIE and on not diminishing the authority of the Office of Education, and on the other hand, he seeks to enhance the role of the Assistant Secretary with respect to making policy. He has sought out any language that would justify his moving in that direction.

My point is, it seems to me, clear indeed.

Senator JAVITS. It seems to me that is why we have legislative oversight and control over appropriations. If we do not like what the Assistant Secretary of Education may do with respect to actual implementation of his authority, as I read the statute, then we can deny him appropriations.

And if we think that he is trying to use too much muscle on the other agencies, we can do the same thing, or ask his superior to fire him.

In other words, are you not in a sense anticipating trouble which has not yet occurred where we really do not know what the Assistant Secretary is going to desire and define.

To make broader education policy, as contrasted with what you quoted, authority for administering, I can see perfectly the authority for administering which he says is invested with the Commissioner, and similarly, with other programs, whatever policy he makes must be subject to that.

If he pushed beyond that, you have certainly shown an ability to stop him.

It seems to me, we are not giving him any more power than the statute gives him until we see what is practiced. We are hollering before we are hurt.

Mr. BRADEMAS. I have to disagree with the Senator.

First of all, he asked for 100 assistants. I do not know what a hundred assistants are going to do if it is contemplated he will carry out the limited duties that the conferees say he should have. And, secondly, I say to the distinguished Senator from New York, I have cited many instances of how the Commissioner has ignored Congress, for example, with respect to the renewal strategy, so that he could carry out action in the executive branch not authorized by law.

Senator JAVITS. Do you have any instances you can cite on the part of Mr. Marland?

Mr. BRADEMAS. Yes.

As I have indicated, the Environmental Education Act was signed by President Nixon in 1970, and we discovered, 1 year after the Presi-

dent signed the act into law, that the Advisory Council, mandated by the legislation, had not been established.

Our subcommittee conducted oversight hearings at that point, and no Advisory Council had been established. The intent of Congress was ignored.

Another example was the way the Office of Education ignored the conferees with respect to the subsidized loan program. In seeking to ignore the distinction the conferees wrote into the statute on the eligibility of students who came from families with incomes of \$15,000 or less, the Office of Education promulgated guidelines which became so much of a problem, if the Senator will recall, we had to suspend the new provisions, or the program would have been in chaos.

Third, in being confirmed before this Committee, the Commissioner promised that the Teachers Corps program would continue to report directly to the Commissioner, but shortly thereafter he dropped the Teachers Corps three layers down in the bureaucracy, leading to a situation that subsequently had to be corrected by provisions in S. 659.

I want to reiterate my concern that my appearance today is not a personal matter. I have high regard for Dr. Marland and have worked with him since he came to OE.

I even said, at one point, he was a man who could serve as Commissioner of Education under Democrats or Republicans.

My concern is his sensitivity to how laws are made in the American constitutional system.

Senator JAVITS. Mr. Congressman, is it not a fact this is an illustration of what often goes on historically with Congress and the Executive; they do not like what he is doing, he gets into office and administers the law. There are two sides.

Mr. BRADEMAS. It is difficult. There are two sides to every case.

Senator JAVITS. I am saying it is a classic confrontation—a Member of Congress does not like what the Executive does in office, he complains about him, that he is not obeying the law the way it was written.

Mr. BRADEMAS. It is not a matter of a personal complaint, it is a matter of fact. There is another instance I am personally aware of, the modest Environmental Education Act.

The fact is the Act mandated an Office of Environmental Education and an Advisory Council.

The fact is, a year later that office was not established nor had an Advisory Council been appointed. It is not a question of doing us a favor. The question is obeying the law.

Senator JAVITS. Do you not think we ought to hear from Dr. Marland on that?

Mr. BRADEMAS. Yes. As a matter of fact, I was the chairman of the subcommittee conducting the oversight function and I remember what the Commissioner said. I have not looked at the hearing in a long time, but I think the Commissioner would agree he was embarrassed and he promised in 1 week he would establish the Office of Environmental Education. And he did so. And he agreed he would appoint the Council and gave their names.

This is not an isolated example. I think we have a record to look at.

SUPPORT OF DR. MARLAND

Senator JAVITS. Even though he gave you satisfaction? You think that is a reason for us not to confirm him?

Mr. BRADEMAs. No; I did not say I was opposed to the confirmation of Dr. Marland. I made that clear at several points. I said I had high regard for him and I am not here to oppose this confirmation.

I am here to say this seems the appropriate time for legislators to reflect on the intent of Congress and give voice to this intent. And I think if we do not give voice to apprehension before the horse is let out of the barn, we have only ourselves to blame.

Senator JAVITS. You are asking us to exercise legislative oversight, as I understand it, even though we confirm Dr. Marland.

To state your view, there are certain restrictions to the office he is nominated for which he should be made aware of?

Mr. BRADEMAs. The Senator is right.

Senator JAVITS. I think I might tell you myself he is in charge of everything we have not delegated to others.

As I believe his office is defined, he handles the Education Division and all that goes with it, except, by exclusive authority we have given to others. And if he tried to usurp any of those authorities, I would vigorously, myself, see they are not usurped. I do not think he ought to have responsibility that is otherwise assigned.

Mr. BRADEMAs. If the Senator would allow me a question, what would the rationale be for the conferees to single out one program and give it to the Assistant Secretary, the emergency school aid program?

Senator JAVITS. I do not think the language I read in the bill restricted him only to that.

Mr. BRADEMAs. He is given supervision. I think the Senator made a proper point. The Assistant Secretary should be the principal officer in the Department to whom the Secretary should assign responsibilities for direction and supervision of the Education Division. That is in there just as much as the particular program you defined.

But in other places the Commissioner, and the Director of the NIE, and the Council on Educational Research are given policymaking authority to administer programs.

So we must try to reconcile the various provisions to read as well together as we can. And I would say a fair reconciliation would be unless given specific authority for a program he seems to have only residual authority—namely, the coordination of the Education Division.

Otherwise we should not have included that specific authority in various places.

Senator JAVITS. If we did not mean what we said, we should not have given him supervision authority and control.

Mr. BRADEMAs. In speaking to what the Senator understands the conference intended by the words to which the Senator made reference, one ought to look at both the language of Senator Pell and the language of Mr. Perkins. I am sorry, I do not wish to be repetitious, and I apologize if I am, but with respect to the significance of the language to which the Senator made reference, I think it is essential that that language be interpreted as part of a whole.

Senator Pell, when he managed the legislation on the floor of the Senate, and Chairman Perkins, in the letter he sent to the chairman of your committee, which I quoted a little while ago, made very clear that the conferees did not intend policymaking authority over education to be given to the Assistant Secretary. And, moreover, to support the argument I have just made, the conferees, as the Senator may recall, rejected the Senate provisions which transferred responsibility for substantive decisionmaking from the Office of Education to the Assistant Secretary.

Senator JAVITS. I am impressed with what you said; I promise you I will look at it with great attention, and will aline myself with anything that will prevent any bureaucratic work for the Assistant Secretary or block up his responsibilities.

Mr. BRADEMAS. I thank you.

Senator JAVITS. If the statute is clear and can be—

I do not have to worry about what a man says. This is a collective action by the House and Senate. If I am left in doubt, I have to go and look at the intent.

Mr. BRADEMAS. I appreciate what the Senator said.

Senator JAVITS. Thank you.

The CHAIRMAN. Senator Dominick.

Senator DOMINICK. You and I were in the conference, and you were on my side.

Mr. BRADEMAS. Correct. I still am.

Senator DOMINICK. Over and over again I said there were not enough financial offices in the colleges to take care of the certification before a student could get a certified loan. I notice you referred to the problems created.

But I refer you on that to page 172 of the conference report.

The House conferees voted you and me down, over and over again, on this. What they said on page 174, is this.

(The material referred to follows:)

EXCERPT FROM S. REPT. 92-798, THE CONFERENCE REPORT ON THE EDUCATION AMENDMENTS OF 1972

* * * * *

Loan limitations.—Under present law, the total of the loans made to a student in any academic year which may be covered by Federal loan insurance or by that of a State or private nonprofit agency or institution may not exceed \$1,500 per year. The aggregate unpaid principal amount on all insured loans which a student may have outstanding at any time is \$7,500. The House amendment, but not the Senate bill, increased the aggregate limitation from \$7,500 to \$10,000. The House amendment further raised the annual limitation from \$1,500 to \$2,500. The House amendment further authorized the Commissioner to waive these maximums with respect to students in specialized training resulting in exceptionally high costs of education. The Senate amendment allowed the annual limitation of \$1,500 to be exceeded when the financial aid officer determines, in accordance with general criteria of the Commissioner, that a student is in need of a larger amount. However, in no case could a loan exceed an annual limitation of \$2,500. The Senate recedes with an amendment limiting the aggregate loan ceiling to \$7,500.

Interest subsidy provisions.—The House amendment eliminated the \$15,000 adjusted family income ceiling as a requirement for a subsidized loan and substituted in lieu thereof an institutional decision that the student has a need for the amount of such subsidized loan. The House amendment required the institution to provide the lender with a statement certifying that the student has evidenced need and stating the amount of the loan subsidized. There was no comparable Senate provision.

The conference substitute contains features drawn from both the Senate and House amendments. Under it a student would be eligible for an interest subsidy if his adjusted family income is less than \$15,000. The student's school will furnish the lender with a statement concerning its determination of the amount of the student's need for the loan and a recommendation as to amount of the subsidized loan. In the case of students whose adjusted family income is over \$15,000, the school may determine that he is in need of a loan to attend the institution. If it so determines, it shall provide the lender with a statement evidencing the school's determination of the amount of his need and a recommendation as to amount of the subsidized loan.

* * * * *

MR. BRADEMAs. The determination of the specific amount of the loan is where we got in trouble on the student loan program.

Senator DOMINICK. I am afraid that is not the interpretation of HEW. But the problem we had between the conferees, which gave rise to this compromised solution has created the difficulty, and I do not think it is fair to say it was the intention of the conference.

I brought that up because you and I were on the same side saying we should not have to do that, and I hope we can get it worked out. There should not be any delay.

The second point is, I want to say, I agree with you that Congress should be the overall policymaker in what we are doing.

The difficulty is, as I see it, and, again, as Senator Javits amply said, the determination of what we really did intend by this.

It seems to me if we put an Assistant Secretary for Education and say he cannot be a commissioner and head of NIE, but give him authority, I think the wording is to direct and supervise, no matter how he handles that job, of necessity, he is going to have to have an input in policy.

Otherwise, there is nothing else he can do but sit there as a figurehead.

I do not believe anyone could want that.

Could you comment on that?

MR. BRADEMAs. It seems to me the answer to the Senator's question clearly depends on the pattern of the decision made at the conference.

Let us look back to the real world history of the development of the Assistant Secretary. There was no Assistant Secretary provided for in the House bill or the Senate bill.

Therefore, there is no legislative history in the House committee with respect to the functions of the new Assistant Secretary of Education.

Senator DOMINICK. That is on the House side?

MR. BRADEMAs. That is on the House side.

Nor is there any history on the Senate side with respect to the Assistant Commissioner of Education.

Senator DOMINICK. Correct, except we did put up a new Commissioner and made the Commissioner head of supervision.

MR. BRADEMAs. The Senator is correct. Exactly right.

As the Senator will recall, the House conferees rejected the Senate proposal in that respect. We said no to an expansion of the Commissioner of Education's powers. That decision, I think, is very significant in terms of the power now being claimed by the nominee for this position, the new Assistant Secretary.

Had we contemplated that the new Assistant Secretary would be claiming for himself the power intended for the new Commissioner of

Education in the Senate version, we clearly would have said no to that too.

Senator DOMINICK. All these things, as you and I know, from having been to so many conferences come to a compromise. Speaking from my own recollections, the House thought the Commissioner had more than he could handle now, consequently they wanted the Commissioner to maintain the prestigiousness and also upgrade HEW; is that correct?

Mr. BRADEMAs. I think the Senator's memory is accurate on that point, provided that one goes a step further to make clear that in creating the position of the new Assistant Secretary, we did not contemplate we would take away any of the existing power and responsibility of the Commissioner, nor diminish the power of the National Institute of Education.

The Council on Research, I think we spelled out clearly—and I think this is touching on the point the Senator from New York was raising—possesses the policymaking function for NIE. As I understand the Commissioner's present view, he agrees with this interpretation.

I must reiterate I am not trying to be hostile personally, but to be honest in what we are trying to do.

I think the Senator is correct. We saw the Commissioner was a very busy man and the new Secretary could be an executive and contribute, and we assigned one administrative function to him.

Senator DOMINICK. Do we not also envision, as I understand it, the Commissioner of Education would report to the Secretary, to the Assistant Secretary? I forgot if that is true of NIE, but I think it is.

Mr. BRADEMAs. The Senator is correct. And I quote from Chairman Perkins' letter to Chairman Williams, in 1972:

"Section 405 of the General Education Provisions Act places authority for making policies for the National Institute of Education in the National Council. Under section 405, responsibility for administration of the Institute is vested in the Director. In my floor statement, I noted that the Director of NIE would report to the Assistant Secretary for Education. This is consistent with section 405(d)(1) of the General Education Provisions Act which states:

"The Director shall be responsible to the Assistant Secretary and shall report to the Secretary through the Assistant Secretary and not to or through any other officer of the Department of Health, Education, and Welfare."

"In approving this provision, however, at no time did the conferees intend to place the Institute under the control of the Assistant Secretary. The provision simply describes the administrative line of authority to be followed within the Department and does not relate to policy formulation. To interpret the provision more broadly would thus be in direct conflict with the clear intent of the conferees that general policy for the Institute be determined by the Council."

Let me point out that the executive branch can take away authority Congress intended, as well as add to it. In 1965, when the Congress wrote the Older Americans Act, and it was debated in the House and Senate, it was thought Congress intended the Commissioner on Aging to be a high level position.

The Commissioner on Aging was to be the No. 1 man in aging, but we are aware under the Johnson administration, and the present administration, the role of the Commission on Aging has been downgraded, in spite of what Congress intended, and in spite of the fact that the Commissioner has to be a Presidential appointee.

What happened in this case, I am hopeful will not happen again: namely, Congress wanted a high level person with respect to aging problems, but the executive branch under two Presidents did not, and they sought to throw out the action of Congress.

I am concerned that Congress in the present instance did not intend there to be high policymaking authority in the position of Assistant Secretary.

The fact the executive branch would like to have it that way is no excuse, again.

Senator DOMINICK. I think it is worthwhile having you bring these points up, very worthwhile.

I must say, with regard to the Advisory Council, I remember exploding over this committee, and I forget which Council was mandated by President Johnson for 3 years, yet he did not appoint a single person. We brought this out over and over again, and it makes no difference, he still did not, and I do not know what you can do.

Mr. BRADEMAS. Once we write the law, they should carry it out.

Senator DOMINICK. I want to thank you again. As far as I am concerned, I think you have brought up some interesting points.

I may not agree with you on the interpretation of all of them, but the—

Mr. BRADEMAS. Thank you, Senator.

The CHAIRMAN. Congressman Brademas, the report is certainly clear, it seems to me, on what was intended would be the authority of the National Institute. Page 230 of the report is quite specific and seems to bear out your basic contentions here that policy questions are to be handled at the Institute level.

Mr. BRADEMAS. I agree with the Senator's observations, and I would reiterate and go further and say I had conversations with both the Commissioner and the Secretary with respect to the relationship between the Commissioner of Education and the National Institute of Education during the House consideration of this measure.

As chairman of the subcommittee concerned with this matter in the House, I was able to say my colleagues on both sides supported this view.

We did not wish the NIE to be controlled by the Office of Education. That is a policy judgment on our side, and that is why we provided an autonomous NIE, independent of control by the Commissioner, and that is why we wrote into the statute that the person who holds the position of Director may at no time be either the Commissioner or Assistant Secretary. And that point of view is reflected in the conference report to which the Senator just made reference, and I think it underscores my argument on another point, which is that the Assistant Secretary should not have policymaking authority with respect to the Institute.

The CHAIRMAN. Does it follow that the product of the Institute, its research and recommendations, must flow to the Office of Education?

Mr. BRADEMAS. Yes, it does.

The CHAIRMAN. It seems to me the Assistant Secretary might well be the one that bridges research and ideas over to the area of program and action.

Mr. BRADEMAS. I think that is a role that can be played, as I said earlier, with respect to communication. I would, however, further draw the attention of the Senator to page 204 of the conference report in which we addressed the question of dissemination. It is important to note that there is a distinction between dissemination and communication.

(The information referred to follows:)

[From Senate Conference Report 92-798, May 22, 1972; pp. 204 and 205]

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

* * * * *
Function of the National Institute of Education.—The functions of the National Institute of Education outlined in the House amendment and the Senate amendment are essentially the same, except that the House language expressly provides that "research" may be either basic or applied research and the Senate language specifically includes career education within the purview of "demonstrations in the field of education". Conferees agreed on language embodying both House and Senate provisions and to the language in the House Report describing the role of the National Institute of Education relating to dissemination.

The conferees intent is that the whole complex set of dissemination/utilization functions that are desirable in this area are a major responsibility of the National Institute of Education. This set of functions should include, but not be limited to, the present and proposed fiscal year 1973 activities of NCEC (the National Center for Educational Communication) such as the following: ERIC, PREP, Publishers Alert, the three pilot state dissemination centers, the program to identify and validate exemplary products and practices. These functions also should include other dissemination activities that might be tailored to the Institute's products and programs in the future. In the transfer of NCEC to the Institute, we feel that the Director must have the opportunity to evaluate and modify existing programs to conform with the mission, functions, and program thrust of the Institute. This range of functions will provide the Institute with an array of dissemination capabilities, from the single most significant machine information retrieval system to the present system of dissemination agents in the field, who work with states, local agencies and teachers to help them apply the best of current knowledge to their problems.

Because of the transfer by the conference report of NCEC to the Institute, the Institute will need those funds and positions previously related to the NCEC. However, it should be made clear that the Director of the Institute will have the right to choose all Institute employees regardless of their prior affiliation with NCEC. Therefore, the present NCEC slots and appropriations requests should be considered integral to the Institute. Further, the conferees intend that dissemination activities be a separate line item in the Institute Budget in order to protect against future encroachment on educational R&D funds.

Obviously, the Office of Education must have the capability to disseminate information about its own programs and their results. The conferees expect, therefore, that the Office of Education will continue these functions with respect to the publication of information about specific categorical or formula grant programs that have been authorized by law. The conferees do not, however, intend that the Office of Education undertake the major responsibilities of dissemination, which are vested in the Institute. Joint dissemination activities are provided for in the appropriate section.

* * * * *
 Mr. BRADEMAS. Here is what was a point of issue in the House consideration of NIE. The view of the Administration, at an

early point in time, was that the authority for the dissemination of research results supported by NIE, reside in the Office of Education.

This view was rejected by both Democrats and Republicans.

The House version of the NIE was adopted by the conference, as I have said. The question of the dissemination function was settled when it became a major responsibility of the National Institute.

We decided not to have it in OE, but in NIE, because in the real world research in education goes on in a dynamic, interactive, as opposed to linear, way.

There is not now a great deal of controversy on this point. Having said that, I would agree with the suggestion of the Senator that the Assistant Secretary—in his reporting function, and his direct supervisory function—be a channel of communication between and among the NIE and OE, and the Secretary.

The CHAIRMAN. We certainly appreciate the opportunity to have your views. This is an area of great importance.

Dr. Marland is here, and we want to have him come to the table and perhaps make further clarification.

Mr. BRADEMAS. I would be very pleased to do that.

STATEMENT OF SIDNEY P. MARLAND, JR., OF NEW YORK, COMMISSIONER OF EDUCATION

Commissioner MARLAND. Thank you, Mr. Chairman, for the opportunity to appear here today.

The CHAIRMAN. Senator Javits suggested, Dr. Marland, that you might like to make some observations at this point following the statement of Congressman Brademas.

Senator Javits has duty on the floor on the consumer bill, and had to leave.

Mr. MARLAND. I appreciate the opportunity to join in this discussion and testify to what would be a very brief and I hope compatible statement with the very wise counsel that Congressman Brademas has afforded this hearing.

I do not find myself in contention with Mr. Brademas. In fact, I consider him a champion of education searching for the same goals for which I search as Commissioner of Education, and as he stated we find ways to collaborate more often than disagree. But, there are two or three points in Mr. Brademas's testimony as to facts where the record might show I would disagree to a degree.

Mr. Brademas spoke of the Assistant Secretary designate vying for power and calling for an organization of 100 assistants. I would like to for the record make clear that there is no approved plan at this time. The Secretary has considered a variety of alternatives. And he has given me the opportunity to help develop this office. There would be about 40 some people, I suggested to the Secretary. Some 58 or 59 different individuals includes, clerks, secretaries, bookkeepers, as well as professional people, for a total of about 98 people altogether. There would be two assistants. This is a matter of semantics. We described it for the making of a small office. I said small, because those who viewed this under law asked there be some 400 people. But I objected strongly to any layer of bureaucracy or grabbing for power.

The CHAIRMAN. Are you saying these proposed 98 positions in total are not professional, and that many of them will be transfers of function?

Mr. MARLAND. Some 59 would be transfers function, and 40 new personnel. Again, I wouldn't want to say this is final, but it is an alternative I could support.

On the matter of treatment of the below-\$15,000 adjusted family income figure under the guaranteed loan program, Mr. Chairman, I have to be governed by General Counsel's directions after a law comes out of Congress. I have to abide by what that law means. I am not the man to probe that law. This is the responsibility of general counsel.

The law was passed before I came to Washington, and it has been on the books for many years. I would not attempt to respond to Congressman Brademas point by point. But I offer my letter to Senator Pell.

The CHAIRMAN. I think you used the words "very small" in describing the proposal you are submitting to the Secretary for the office of Assistant Secretary.

Mr. MARLAND. It is viewed as small in the eyes of management who first viewed it. They first started it at 400 professional people. I said that that wasn't necessary and asked that it be held to 100, including 49 who were being transferred.

It would be helpful to this committee if the proposal as you presented it be furnished to us.

Mr. MARLAND. This is a proposal, Chairman, and not a planning document.

The CHAIRMAN. We would be delighted.

Mr. BRADEMAS. May I ask further, Senator, if it is in order, I think it would be very helpful if the Assistant Secretary designate could tell us more specifically perhaps at some point in time what kind of programs he contemplates bringing into that office from elsewhere.

The CHAIRMAN. Doesn't the proposal describe the functions of the personnel?

Mr. MARLAND. Yes. They are not outlined by job description, but it is a six- or eight-page document. They would answer the Congressman's questions.

Mr. BRADEMAS. Did I not understand the Commissioner to say he contemplated bringing into the office of Assistant Secretary budgetary authority with respect to NIE and OE?

Mr. MARLAND. I think that budgetary authority would not be explicitly established in that office, Mr. Congressman. That still remains to be hammered out. When you say budgetary authority, in the way the administration operates, that should be in the authority of the institution or person charged with the dollars. They are not established in the Assistant Secretary.

I told the committee last week I hoped the supplemental budget would be here.

Mr. Chairman, I have to advise the committee that there is great debate going on in the administration over the advancement of the supplemental budget, in support of the new legislation, and I am frustrated that I am not able to say to you that it will be here by tomorrow or the day after tomorrow.

I think the committee is aware of the dreadful conditions of economic strain that this administration is facing. It is obviously facing the possibility of reducing some program budgets below what Congress would like to see.

We are struggling to reconcile our differences. I hope we will have the document here by the end of this week.

The CHAIRMAN. One further observation. I had submitted questions regarding the community college program, and Senator Javits also had written questions.

Mr. MARLAND. We have your questions, Mr. Chairman, as well as questions from Senator Boggs. We do not have Mr. Javits' questions. Your questions are requiring another 2 or 3 days for completion. They should be here by Friday or Monday, Senator Boggs' questions were delivered this morning. We are still waiting for Senator Javits' questions.

The CHAIRMAN. You are waiting for the questions?

Mr. MARLAND. I would have to ask for help from my staff, whether we have received Senator Javits' questions. I have just been informed Mr. Chairman, that they are in now, and we are working on them.

The CHAIRMAN. So we can expect your replies very shortly on all of this?

Mr. MARLAND. You can.

The CHAIRMAN. They are essential.

Mr. MARLAND. Yes, sir.

The CHAIRMAN. Is there anything further?

Senator DOMINICK. Nothing.

The CHAIRMAN. I have some questions here dealing with the right to read program, I understand that the funds are drawn from eight different sources; is that correct?

Mr. MARLAND. That is for fiscal 1972.

The CHAIRMAN. What can we look for?

Mr. MARLAND. A line item in 1973, I guarantee.

The CHAIRMAN. Under what authority?

Mr. MARLAND. I believe it is under the Cooperative Research Act, the general authority for inventive action.

The CHAIRMAN. And there would be a line item referring to the right to read program?

Mr. MARLAND. Right.

The CHAIRMAN. Fine. Thank you very much.

(Information referred to on p. 7 and subsequently supplied follows:)

RESPONSES TO QUESTIONS PRESENTED TO SIDNEY P. MARLAND, JR.,
U.S. COMMISSIONER OF EDUCATION

1. (a) What is being done with respect to solving the unique educational problems of large urban communities?

(b) In particular, what is being done in this regard with respect to the Nation's largest local educational agency, New York City?

The Office of Education is aware of the plight of large cities, and concerned about solving their educational problems. The President's Commission on School Finance recommended that a special program of Federal aid to large city school systems be adopted, to meet their extraordinary needs for additional aid. This recommendation is being studied as a part of the school finance effort currently being undertaken by the Department and the Office of Education. Recommendations from this Task Force are currently being considered by the Secretary and the President.

In addition, other categorical OE programs have serious implications for large cities. For example, Title I of the Elementary and Secondary Education Act provides significant amounts of funds for compensatory education for educationally disadvantaged children in our large cities. In our consideration of reform of the Title I formula, in the light of 1970 Census data, you can be assured that the special needs of large cities will be taken into consideration as any new formula is devised.

The Office of Education is aware of the problems of New York City and is taking steps to meet them. As the response to question 3 notes, additional Bilingual Education funds have been made available to 21 of the 26 New York City school districts, to meet the special needs of their many bilingual children. We also anticipate that when funds become available under the Emergency School Aid Act New York City will be eligible for assistance under that Act's several different provisions.

2. What are your plans with respect to education of the gifted and the talented?

Some of the activities which we have launched are as follows:

1. Using funds from other legislative authorities, the Office of the Gifted and Talented has funded a National-State Leadership Training Institute through the State Department in Illinois and through the State of California, to bring together the country's best leadership in this area and to develop training materials and programs for State Departments and teachers of the gifted and talented. It is anticipated that this activity will continue over the next four or five years with the objective of strengthening the 50 State Departments of Education, only ten of which presently have a full-time person at the State level for the gifted and talented.

2. We are working to establish a national clearinghouse to provide information to educators throughout the country on the best educational practices for the gifted and talented.

3. We are working in the area of career education for the gifted and talented.

4. We are funding research to improve our identification of minority group gifted and talented children.

5. We are working to facilitate the development of cooperative community and private sector projects where the gifted might serve as interns with selected leaders outside the school system.

6. In cooperation with the Explorer's Club, a non-profit organization, we have launched a national competitive program to take gifted and talented youngsters on worldwide learning expeditions led by some of the country's leading scientists. In this year's pilot program, we selected 42 final winners from around the country, including 11 American Indians. These students experienced such learning opportunities as surveying the ancient city of Sparta with one of the world's leading underwater archaeologists; studying molten lava lakes, 180 meters within the crater of a volcano in the Congo; conducting an ecological survey of the Kenya lakes in Africa; and other once-in-a-lifetime learning opportunities. The Exploration Scholarship Program involves an investment this year of \$15,000 of Office of Education funds and an equivalent matching amount from the Explorer's Club. This grant is being used to develop a training prototype for gifted students to be apprentices with scientists. We hope to expand it in the coming years.

3. As you know, my colleagues and I from Eastern states have for some time been interested in the allocation of resources for bilingual education programs. Could you elucidate on this, with especial reference to the status of programs for Spanish-speaking individuals of Puerto Rican descent, and what proportion of programs are being directed toward them?

Fifty-three projects in 12 States (24 percent of the 213 Bilingual Education projects) serve some Puerto Rican children. Fifteen percent of the total (32 projects) serve Puerto Rican children exclusively.*

The 53 projects were granted a total of \$7.979 million in fiscal year 1972, 20 percent of the Bilingual Education funds administered by the Office of Education. Of course, Puerto Rican children also share in the activities of other OE programs, such as nationwide projects in testing, curriculum development, curriculum acquisition, and dissemination.

There was a marked increase in Bilingual Education funds for New York State in fiscal year 1972 over the previous fiscal year. In FY 1972, \$4,354,300 were committed to Puerto Rican Bilingual Education projects in New York, an increase of approximately \$1.7 million over the previous year. All of the New York Bilingual funds in FY 1972 went to Puerto Rican projects.

In FY 1972 there were Bilingual Education projects funded by OE in 21 of the 26 New York City school districts.

* According to the Division of Bilingual Education, an estimated 15 percent (777,583) of the estimated 5,044,578 children in the United States who need bilingual education are Puerto Ricans.

4. Could you describe how cooperation is being effected with State education agencies and what is planned in the area of Federal-State relations?

During my service as Commissioner, the U.S. Office of Education has strengthened and expanded both the frequency and quality of contracts with State Education Agencies in the planning, implementation, and operation of Federal education assistance programs.

Each year, the Office of Education sponsors at least one meeting with all Chief State School Officers at which major new developments and concerns are discussed in an open exchange of viewpoints and needs. After the most recent such meeting, a number of Chief State School Officers told me they considered it the most useful and productive meeting they ever had experienced with USOE.

In addition to these periodic meetings, I engage in practically continuous verbal and written interchange with Chief State School Officers on subjects ranging from legislative and budget issues to USOE operational decisions and activities.

The pattern of contacts which USOE has followed over the years and which I have sought to improve has involved State Education Agencies in the development of implementing policies and procedures to be promulgated by USOE, the modification of ineffective policies, and the strengthening of effective ones. During my service as Commissioner, the Office of Education has increased its continuing assistance and guidance to States seeking such help by expanding both formal and informal contacts between the State and Federal officials responsible for administering the various Federal assistance programs.

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At the program operating level there is continuous interchange between responsible Federal administrators and their State counterparts to resolve managerial and administrative issues, ranging from issues of project application review to project planning and operations.

Coordination and cooperation between State Education Agencies and the U.S. Office of Education obviously are conducted at many different organizational levels and for a wide variety of purposes.

It has been my policy as Commissioner to seek the advice and guidance of Chief State School Officers on the complex and difficult problems of educational finance, administration, and program quality which are of mutual concern. It also has been my policy to seek State advice and assistance in formulating program plans and policies which guide the administration and operation of Federal education assistance programs. The Chief State School Officers have given generously of their time and talent to help the Office of Education develop cooperative and mutually beneficial policies relating to administrative procedures, reporting requirements, and the need for improved use of available educational resources.

At lower levels of organization, a variety of meetings and conferences between USOE program administrators and their State and local counterparts are held each year. At this moment, for example, USOE program officials of Titles I, III, V, and VII of ESEA and of the impact aid program are meeting with representatives of 16 States

in New Orleans to discuss various operational issues. The other States will be involved in similar meetings during the next two weeks.

At a somewhat lower organizational level, constant interchange occurs in day-to-day administration of programs as USOE personnel help State education agencies develop program and project plans, revise established procedures, mount State educational needs and management studies, and devise interstate efforts at mutual assistance and cooperation to solve common problems.

At these operational levels, the State/USOE contacts are frequent, continuous, intense, and highly effective in achieving the goals and objectives which Congress has established for the various programs which USOE administers.

In the area of the handicapped, we have for the last four years had a joint State-Federal planning activity which has been labeled by the State Directors of Special Education "Mutuality of Planning". The Office of Education supplied consultants to help develop a common planning vocabulary, to explain the concepts of program planning and evaluation and workshops have been held each year with State agency personnel. Special forms have been designed to encourage the States to develop five year plans in education of the handicapped, and we have effective cooperative activity between vocational education staff, special education staff, and other appropriate agencies.

In addition to these activities we have also helped the States analyze their needs for special education manpower and have used their projections as the basis for our planning for the expenditure of Federal funds. A major joint Federal-State decision was to use funds under the Education of the Handicapped Act as a catalyst to increasing State and local funding rather than simply using those funds for basic support. By this joint decision each year more than three hundred projects begun under Federal funds are continued under State and local support. In addition States have carefully chosen to use the State plan monies of the Education of the Handicapped Act to begin programs in areas which were not authorized under State law, or where sufficient State support had not been available. In this way programs for multiple handicapped children, autistic children, children of preschool age and so forth have been started on Federal funds and then State legislation has been effected to allow for the support of these programs on a broader base. This year more than 200 laws were passed in State legislatures affecting Special Education; 85 of them were considered major bills. Much of this activity has been correlated with the increased Federal emphasis on education of the Handicapped in recent years and to the catalytic effect of Federal funds.

5. What is being done to carry out the provisions of the recently-enacted Emergency School Aid Act?

A task force is at work planning for the implementation of the legislation, under the direction of Project Manager William Rock, Deputy Associate Commissioner for Management, Equal Educational Opportunity. This task force has identified a number of significant issues in the legislation and has presented alternative solutions for implementation to the Commissioner and the Secretary for decision.

Regulations and guidelines for the program's administration are currently being developed. We hope to involve interested members of the public and the educational community in their further development when a document is available for discussion purposes.

Of course, the program cannot be implemented until an appropriation becomes available. Office of Education planning efforts are designed to allow for implementation as soon as possible after funds become available.

6. What is the Administration's position on the House-passed busing bill?

The Administration feels strongly that the Congress should act on the proposed Equal Educational Opportunities Act before the end of the 92d Congress. This legislation is essential if uniform guidelines for courts to follow in their issuance of school desegregation orders are to be available for the 1972-73 school year.

The Administration proposal is contained in S. 3395, the Equal Educational Opportunities Act of 1972. We continue to prefer the Administration's original bill.

7. What is being done in respect of assistance for busing for racial balance and for desegregation?

No Office of Education funds are being spent to support busing to overcome racial imbalance. Most OE programs are categorical in nature; funds are available only for specific purposes, such as the purchase of books or equipment or the provision of compensatory education. The only program of general aid is contained in P.L. 81-874, the impact aid program. These funds go into the general operating budget of eligible school systems. Any decision to use these funds for busing purposes would be strictly a local decision. Since the law does not provide for accountability by the local educational agency concerning the use of its impact aid funds, the Office of Education has no knowledge of any P.L. 874 funds' being used for that purpose.

Under the Emergency School Aid Act, not yet funded by Congress, the Administration will, of course, follow the various strictures on funding busing contained in the Education Amendments of 1972, P.L. 92-318, e.g. sections 801 and 802.

The CHAIRMAN. The hearings stand adjourned.
(The hearings were adjourned at 3:55 p.m.)



