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ABSTRACT

This compendium of materials concerning the Emergency School Assistance Program, prepared by the Senate Select Committee on Equal Educational Opportunity, contains the following: (1) An evaluation prepared by the American Friends Service Committee, et. al., Nov. 1970; (2) Department of Health, Education and Welfare report on the program, Feb. 1971; (3) Select Committee staff study of program administration, Jan. 1971; (4) Report to the Select Committee on the need to improve policies and procedures for approving grants under the program, by the Comptroller General, March 5, 1971; and, (5) Text of P.L. 91-380, The Emergency School Assistance Appropriation, and related statements before Congress. In addition, regulations, guidelines, and instructions of D.H.E.W. are listed as follows: (a) program regulations; (b) application for emergency school assistance; (c) instructions for submitting project proposals; (d) general terms and conditions; (e) handbook for public and private nonprofit organizations; and, (f) instructions for completing application for special community projects. (JM)

92d Congress
1st Session

COMMITTEE PRINT

EMERGENCY SCHOOL ASSISTANCE PROGRAM: BACKGROUND AND EVALUATIONS

PREPARED BY THE

SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY UNITED STATES SENATE

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(II)

FOREWORD

On May 21, 1970, President Nixon proposed the enactment of legislation to provide $1.5 billion to assist school districts in meeting the problems incident to desegregation of their schools. He called for an immediate appropriation of $150 million as an emergency fund. The Congress responded in August 1970 by appropriating $75 million to initiate the Emergency School Assistance Program.

The report to the Select Committee on Equal Educational Opportunity by the Comptroller General of the United States examines the policies and procedures for approving grants under the program.

The report, "The Emergency School Assistance Program: An Evaluation," has been prepared by a group of private organizations concerned with the problems of race, education, and poverty. It is based upon personal visits to 295 assisted school districts.

These reports are reproduced here, together with the legislative history, regulations, guidelines and other materials relating to the Emergency School Assistance Program because of the widespread interest in the program and in light of the proposed Emergency School Assistance and Quality Integrated Education Act and other bills which are now pending before the Congress.

WALTER F. MONDALE,
Chairman, Select Committee on
Equal Educational Opportunity.

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THE EMERGENCY SCHOOL ASSISTANCE PROGRAM

An Evaluation

Prepared by:
American Friends Service Committee, Delta Ministry of the National Council of Churches, Lawyers' Committee for Civil Rights Under Law, Lawyers Constitutional Defense Committee, NAACP Legal Defense and Educational Fund, Inc., and Washington Research Project.

Introduction and Summary

The promise of the Emergency School Assistance Program has been broken.

Funds that were appropriated by the Congress last August to help desegregated public schools have been used for general school aid purposes unrelated to desegregation. In many instances, funds have been granted to school districts that are continuing to discriminate against black children.

This report, prepared by a group of private organizations concerned with the problems of race, education and poverty, is an evaluation of the first months of the administration of the Emergency School Assistance Program (ESAP).* The report is based upon personal visits to nearly 300 school districts receiving ESAP grants by attorneys and by other persons experienced in school desegregation problems, and upon a review of the grant proposals of over 350 successful applicant districts.

We found serious defects in the administration of the program.

1. Large numbers of grants have gone to districts engaging in serious and widespread racial discrimination. Of the 285 ESAP-assisted districts which we visited, 179 were engaged in practices that rendered them ineligible for grants under the statute and the Regulations. In 87 others, we found sufficient evidence to consider the districts' eligibility questionable. In only 29—less than 10 percent—did we find no evidence of illegal practices. Specifically, we found:

—94 clear and 18 questionable cases of segregation of classrooms or facilities within schools;

—47 clear and 10 questionable cases of segregation or discrimination in transportation;

—62 clear and 4 questionable cases in which faculties and staff had not been desegregated in accordance with applicable requirements;

—98 clear and 123 questionable cases of discrimination in dismissal or demotion of black teachers or principals;

—12 clear and 4 questionable violations of student assignment plans approved by HEW or ordered by the courts;

—13 clear and 39 questionable cases of assistance by the grantee school district segregated schools.

2. ESAP funds have been used to support projects which are racist in their conception, and projects which will resegregate black students within integrated schools.

3. A substantial portion of the "emergency" desegregation funds have not been used to deal with desegregation emergencies; they have been spent for purposes which can only be characterized as general aid to education. Many of the grants are going to meet ordinary costs of running any school system, such as hiring more teachers and teacher aids, buying new textbooks and equipment, and repairing buildings—needs that desegregating districts have in common with school systems throughout the United States.

4. Grants were made to school districts that are not operating under terminal desegregation plans and therefore do not meet the initial condition of eligibility for ESAP funds.

*The organizations involved in the preparation of this report are: American Friends Service Committee, Delta Ministry of the National Council of Churches, Lawyers' Committee for Civil Rights Under Law, Lawyers Constitutional Defense Committee, NAACP Legal Defense and Educational Fund, Inc., and Washington Research Project.

5. In the haste to get some money to as many southern school districts as possible, ESAP money has been dissipated in grants which in many cases are too small to deal comprehensively and effectively with the problems of desegregation.

6. In contrast to the hasty and haphazard way in which grants for school districts have been approved, the significant provision of the ESAP Regulations authorizing community groups to receive grants under the program to lend their assistance to the desegregation process has been virtually ignored—not a single grant has been made to a community group.

7. In many districts, biracial advisory committees have not been constituted in accordance with the requirements of the Regulations.

8. The funding priorities used by ESAP administrators have been distorted. Only a very small portion of ESAP funds have gone to projects that emphasize student and community programs designed to improve race relations in desegregating districts.

ESAP grants are being distributed to school districts on a quarterly basis. In most cases, only the first of four federal payments has been made. Thus, before any additional money is spent, HEW still has an opportunity to correct in part the mistakes that have been made—at least to require civil rights compliance by recipient districts—and to redirect the program toward the ends which Congress intended. We are issuing this report now in the hope that responsible federal officials will take appropriate steps and end the abuses we have found in the program.

Chapter I

A DESCRIPTION OF THE EMERGENCY SCHOOL ASSISTANCE PROGRAM

A. Legislative history

On March 24, 1970 President Nixon issued a comprehensive statement setting forth his Administration's policies on school desegregation. He called for the enactment of a two-year $1.5 billion program, designed in part to assist school districts "in meeting special problems incident to . . . desegregation." On May 21, 1970, in a second message, the President noted the large number of school districts in the South scheduled to implement terminal desegregation plans at the start of the 1970–71 school year, and called for immediate appropriation of $150 million to aid these districts in the process of desegregation.[1] In August, Congress responded by granting half of the President's request, appropriating $75 million and thereby establishing the Emergency School Assistance Program.

In the Senate hearings at which the Administration's proposal was considered, concern was expressed that the projects that would be funded were likely to be ineffective, or, worse, harmful to the desegregation process. It was feared that the funds would be used to assist districts engaged in discriminatory practices, that they would duplicate existing school aid programs and that the community would not be involved in the development and implementation of ESAP projects. Some critics argued that the proposal amounted to a political pay-off to the South to assuage the reaction to desegregation requirements, and that there was no "emergency" requiring a precipitate infusion of new federal funds.[2]

Senator Mondale questioned whether federal "aid to desegregation" might actually be used to support districts engaging in discriminatory practices. He cited a number of practices which had been reported in nominally desegregated southern districts, including segregated classrooms, segregation and discrimination in extracurricular activities, discriminatory treatment of black teachers and principals, pupil segregation through testing and tracking, and aid by public school systems to segregated private schools.

Responding for the Administration, Secretary Finch conceded that these abuses existed, but assured the Committee that:

"[the Administration would] under no circumstances . . . fund districts . . . who fire or demote anyone on the basis of race or with segregated classrooms or other basic things that you mentioned." [3]

Secretary Finch also promised that ESAP would be administered as a competitive grant program, with money going only to those districts whose proposals showed specific promise of dealing comprehensively and effectively with the problems of desegregation.[4] This would make more likely the rejection of proposals with little or no relation to problems of desegregation.

In appropriating $75 million for ESAP, Congress placed only three substantive restraints on the program. Two dealt with particular racially discriminatory

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practices—aid by school districts to private schools which discriminate on the basis of race in admissions, and the withdrawal of local and state funds from public schools as a result of desegregation. The third was designed to open up the program to northern school districts and to districts desegregating under the orders of state courts as well as federal courts and state administrative agencies.[5] The balance of ESAP remained to be formulated in the Regulations to be adopted by the Secretary of HEW.

B. ESAP regulations

1. Preventing use as general aid

The overall thrust of the Regulations is to confine ESAP grants to projects meeting "special needs incident to the elimination of racial segregation and discrimination among students and faculty in elementary and secondary schools," and hence to bar the use of the money as general aid to education. The money is to contribute to the cost of "new or expanded activities . . . designed to achieve successful desegregation." [6] The Regulations established as the criterion for determining whether and to what extent a district should be aided under the program, the "relative promise of the project or projects to be assisted in carrying out the purpose of the program" and "the extent to which the proposed project deals comprehensively and effectively" with problems of desegregation.[7]

The portion of the Regulations describing "authorized activities" which can be funded under the program list several which may or may not relate to special problems of desegregation:

—"providing for individualized instruction, team teaching, nongraded programs, and the employment of master teachers"

—"upgrading basic skills and instructional methodologies"

—"providing teacher aides whose employment will help improve instruction in schools affected by desegregation." [8]

The inclusion of these items created the need for rigorous evaluation of grant applications to assure that projects falling within these categories were specifically related to problems of desegregation, so that ESAP money would not be used as general school aid.

2. Prohibiting grants to racially discriminatory districts

ESAP, like all federal spending programs, is governed by Title VI of the Civil Rights Act of 1964, which prohibits the use of federal funds to assist racially discriminatory programs or activities. In addition, the ESAP Regulations expressly require that applicants give formal assurances that they are not engaging and will not engage in certain specifically enumerated racially discriminatory practices:

First, the past transfer of goods or services to private schools which practice racial discrimination with the purpose of encouraging or supporting such schools, or the future transfer of goods or services to such schools for any purpose;

Second, discrimination on the basis of race in the hiring, firing, promotion or demotion of teachers, principals or other staff who work with students;

Third, the failure to assign teachers and other staff who work with students so that the ratio of minority to nonminority faculty and staff in each school is "substantially the same" as the ratio in the school district as a whole;

Fourth, the use of any devices, "including testing", in the assignment of children to classes or in carrying out other school activities, which discriminate on the basis of race, or which "result in the isolation of minority and nonminority group children." [9]

In addition, districts may not receive ESAP grants if their state or local funding has been "withdrawn or reduced as a result of desegregation." [10]

3. Assuring community participation

To assure that school boards would not ignore the interests of the community in formulating and administering ESAP projects, the Regulations require biracial community committees and student participation in the program.

Each successful applicant is required to establish a biracial committee, made up half of minority and half of nonminority members. At least half of the members are to be parents of children directly affected by the district's ESAP-funded project. Where a biracial committee of this general character has been established by court order, that committee is to act as the ESAP committee. Where no court-established committee exists, school officials are to select a group of organizations "which, in the aggregate, are broadly representative of the minority and non-

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minority communities to be served." Each of these organizations appoints one member to the biracial committee. School officials are then to appoint sufficient additional members to bring the committee to the 50–50 minority-nonminority ratio required, and to assure that at least 50 percent of the members are parents.

School officials must consult with existing court-established advisory committees both on the formulation and the administration of the ESAP-funded program in the district. Where no court-established committee exists, however, the officials need only list the nominating community organizations in their grant application, and are given 30 days after the approval of their grant to assemble the committee. Thereafter, school officials are required to consult with the committee concerning the administration of the project.[11]

The Regulations further require that with the opening of school, a student advisory committee, half minority and half nonminority, be selected "by the student body" of each secondary school affected by an ESAP project. School officials must consult with the student advisory committee with respect to carrying out the project and the "establishment of standards, regulations, and requirements regarding student activities and affairs." [12]

4. Authorizing grants to private groups

The Regulations provide for ESAP grants to private nonprofit groups, where such groups propose projects which will assist in the desegregation process. Ten percent of the money appropriated for ESAP is set aside for such grants. Any part of the 10 percent not spent on these grants is to be reallocated to the general program and made available to school officials.[13]

C. Administration of ESAP

1. Grants to school districts

The funds for ESAP were appropriated on August 18. The Regulations governing the program had already been prepared, and they were published in the Federal Register on August 22. The Commissioner of Education was vested with responsibility for the administration of the program, and he delegated this responsibility to the Office of Education's Division of Equal Educational Opportunity (the Title IV office).[14] Grant application forms had also been prepared, and they were distributed and explained to school superintendents in hastily arranged statewide meetings in each of the southern states, the earliest of which was held on August 20. At these meetings, great stress was placed on the speed with which applications would be processed; school officials were told to go home for a day or two, decide what their needs were, and then reassemble at workshops manned by Title IV personnel, at which time they and the federal officials would jointly fill in the details of the grant applications.[15]

In the days following, teams of Title IV experts helped hundreds of school officials through the necessary paperwork and the grant applications started pouring in. The first grant, $1.3 million to Jackson, Mississippi, was announced on August 28. By October 2, 488 grants had been awarded, totaling over $26 million. By October 30, 722 grants were committed, obligating over $47 million.

This large number of grants within such a short period of time was possible only because the Title IV regional offices were placed under a "36 hour turnaround" requirement in processing formal applications—that is, an application had to be approved (or disapproved) within 36 hours after it was received in the regional office.

Because of this extraordinary time pressure, grant applications received little or no substantive evaluation. Within days after the process started, the concept of a competitive program of aiding selected districts according to the promise of the proposals to deal comprehensively and effectively with desegregation problems—the criteria mandated by the Regulations—had been largely abandoned. In some cases, districts were being quoted "ballpark figures" approximating the grants they might receive, based upon such mathematical factors as the size of the districts' budgets, the number of minority students, and the number of students reassigned under their desegregation plans. The substance of the districts' proposals—their relationship to problems of desegregation or lack thereof—played little role in the calculation.

Similarly, civil rights compliance review was made almost impossible by the demand for speedy and widespread distribution of money. Early in the process, the Civil Rights Division of HEW's Office of the General Counsel called individuals familiar with school desegregation problems, such as the field representatives of the American Friends Service Committee, to determine if there were

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reports of violations of Title VI or of the ESAP Regulations in the applicant districts. But this practice was soon abandoned, apparently because it caused too much "delay" in processing applications. The civil rights compliance "check" was thereafter reportedly limited to a review of HEW files to determine whether there were any outstanding civil rights complaints against the applicant district. If there were none, the district was assumed to be in compliance. The importance of civil rights compliance was thus seriously downgraded.

2. The neglect of private groups

In many school districts, there are community organizations which for many years have fought for school desegregation while school officials fought against it. These groups have shown a commitment to desegregation and have developed expertise in the field. Black community organizations can help black students adjust to desegregation, and bring home a black viewpoint to white parents, students and teachers who may have had little prior contact with black people as equals. Private biracial human relations groups have useful experience in running programs designed to promote interracial communication and understanding. It was to assist these organizations, that part of the ESAP money was reserved for grants to such private groups. But, in sharp contrast to the public grant side of ESAP, the program of grants to private nonprofit groups has been characterized by stagnation and delay. At the outset, this program was severed from the main ESAP grant machinery, because high-level Title IV officials opposed the concept of ESAP grants to private groups.[16] The private groups grant program was temporarily turned over to the Center for Community Planning in the Office of the Secretary of HEW, a body with little previous experience either in distributing federal grants or in dealing with problems of school desegregation.

Grant applications for public ESAP projects were already available when the program became law on August 18, and within days these applications were being distributed and explained to school officials. By contrast, the government did not even inform leaders of private groups active in school desegregation of the availability of ESAP. When some of these groups learned of the program and sought help in taking advantage of it, they were told that the Title IV meetings were primarily for school officials; that they were free to attend but could expect neither information about their aspect of the program nor assistance in formulating proposals.

Application forms for private groups were not available until October, when meetings were finally held in Atlanta and Dallas to acquaint selected community leaders with the program. By this time, administration of the private groups aid program had been transferred to a special agency established within the Office of Education for this purpose. By the middle of November, not a single grant to private groups had been made. As a result, the important contribution which these groups might have made in the crucial opening months of school in newly integrated districts has been lost.

Chapter II

THE EXPENDITURE OF ESAP FUNDS

In connection with this study, the Department of Health, Education and Welfare was asked to make available the applications from school districts to which grants had been made under ESAP. In response, 368 approved applications from school districts in 13 states were provided. These represent slightly more than 50 percent of the applications approved by October 30, and 43 percent of the funds obligated by that date.

A review of these applications reveals that ESAP grants have been made to school districts that are ineligible under the Regulations. Other ESAP grants have funded projects that are racist in their conception, or that may lead to resegregation. The primary use for which ESAP funds have been approved has been general school aid unrelated to the "special needs" occasioned by the desegregation process. Moreover, ESAP funds have been awarded in a manner which regulates vital community and student programs to a minor role. Finally, funds have been distributed in small grants among many districts, and the priority that the Regulations establish for comprehensive projects has been ignored. In each of these respects, the purposes of the program have been badly distorted.

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A. Grants to ineligible districts

The ESAP Regulations establish certain preconditions to eligibility for an ESAP grant. Among these are the requirement that the school district be desegregating under a plan calling for the complete elimination of the dual system and approved by a federal district court or by HEW, and the requirement that the grant application, at the very least, list the community organizations which have been selected by the school board to nominate the members of the biracial advisory committee.[1] Our review of ESAP approved applications has revealed that school districts have been funded despite their noncompliance with these explicit requirements.

1. Grants to districts without approved desegregation plans

Northampton County, Virginia does not have an approved plan—indeed federal financial assistance to that district was terminated under Title VI on September 13, 1968 because of its refusal to adopt an acceptable plan. Nevertheless, it is receiving a $28,000 grant. Stewart County, Georgia is still operating under an obsolete freedom of choice plan dating from before 1968, yet it is receiving a $40,000 grant in violation of the requirement that ESAP applicants be operating under terminal plans effective in the 1968–69 school year or thereafter.

The Metropolitan Public Schools of Davidson County (Nashville), Tennessee was granted $565,400 in ESAP funds. Nashville has submitted a plan for faculty and student desegregation to the federal district court. But while the court approved the faculty plan, it reserved judgment on the student plan until the Supreme Court decides on the school cases now pending before it. Thus Nashville does not have the terminal desegregation plan required by the Regulations.

2. Grants to districts out of compliance with the advisory committee requirement

A number of districts are receiving ESAP grants although they have not followed the Regulations requiring the establishment of a biracial advisory committee. Some make no mention at all of such a committee, although the Regulations specify that a list of the community organizations selected to nominate the members of the committee must accompany each application. Among these districts are Newport and Prescott Districts, Arkansas, and St. Clair County, Alabama.

The Regulations specify that each applicant district is to name between five and fifteen organizations, "which in the aggregate are broadly representative of the minority and nonminority communities to be served." These organizations are each to name a member to the committee. Only then are school officials authorized to select additional committee members, and then only to the extent necessary to achieve the required ratio of minority and parent members.[2] Many successful applicants appear to have violated these provisions in forming their biracial committees.

In Camden County, Georgia, the seven members of the biracial committee were selected by the school board "according to contact with the people and interest in the progress of the Camden County community." In Butts County, Georgia, the eight members of the committee were "selected by the school administration with the intent to obtain a cross-section of the community . . .".

In Russell County, Alabama the temporary committee members were "selected from among community leaders known to be cooperative in matters pertaining to education." The purpose of the Regulation requiring selection by community organizations and not by the school board is precisely to avoid a committee made up of persons whom school boards, which have long opposed desegregation, consider to be "cooperative."

Even in those districts which did choose organizations to select members of the biracial committee, there are serious questions whether the organizations chosen encompass a broad range of community opinion. For example, Cleveland, Tennessee is receiving an ESAP grant to hire a black person with expertise in guidance and counseling "to give the image of a black person working in a responsible position" in the school system. This project was proposed in response to pressure from the local branch of the NAACP, which organized a two-day boycott of the schools. In its ESAP application, the school district lists five organizations which will select members of the biracial advisory committee. The Cleveland NAACP branch is not among them.

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B. ESAP funding of racist projects

ESAP funds have been approved for the support of a variety of programs which are racist in their conception, and which are likely to exacerbate the level of racial tension.

1. Character and hygiene of black students

Andalusia, Alabama proposed a "community program" to deal with the "morals, conduct, health and personal standards of black students and the home environment of black students . . ." According to the application, "the houses and neighborhoods [of black children] are generally unattractive. Little effort is made to make the surroundings attractive with flowers, pictures or furnishings . . . ." The grant will pay for visits by teachers to the home of each black child.

Similarly, Lake County, Tennessee defined its emergency as the general character of black children. According to the district's application, black children "show poor self concepts . . . use dirty, vulgar language . . . show poor oral hygiene and health habits . . . (poor bathroom habits) . . . display poor eating habits and table manners." ESAP money was granted to hire a physical education director whose job is to deal in some undefined way with the board's concept of the "character" of their black students.

Lee County, Georgia received an ESAP grant to provide bathing facilities for black children. The application asserted that because the homes from which these students come are without "modern bathing facilities, cleanliness, good health and sanitary conditions in the school demand" the provision of these services.

Madison County, Mississippi described its most "pressing problem brought about by court ordered desegregation" as the "sanitation and personal hygiene" of its students. "For students to accept close association with the opposite race, a very close watch must be kept on the cleanliness of all aspects of the operation of the school. This is especially true with females." ESAP money was granted to hire a female hygienist for each of its four schools.

Caswell County, North Carolina emphasized the concern of parents that "a child would be assigned to an ill-kept drab environment; given dirty books and forced into class association with dirty peers." It defined its emergeney as "a wide variety of family values and standards of living, from the child who sleeps in the same underwear he wears to school for a week without change and emits odors offensive to those in proximity, to the child who comes to school each day freshly bathed and groomed." Its $95,000 grant will be used for programs "facilitating desegregation through upgrading total individual and group health: physical, emotional, mental and social."

2. Resegregation

Some projects, by their design, suggest a new effort on the part of local school officials to resegregate students within the "integrated" schools, with the direct assistance of the federal government.

Douglas County, Georgia received an ESAP grant to purchase two vans for the purpose of transporting black students from the junior high schools to cooperating businesses, industries and service centers "so that learning experience would more nearly meet the individual needs of the black students." Thus ESAP money is funding a project that is based on the assumption that only black students need vocational as opposed to academic training—and which removes black students from the newly integrated school.

According to the application filed by Wichita Falls, Texas, it is necessary, because of a shortage of school buses, to keep 476 black elementary students at a "closed" school for the first hour of the school day. There are too few buses to transport all the white students according to a regular schedule. After the other students are transported, the buses come for the 476 and take them to several "integrated" elementary schools. ESAP money was granted to employ teachers and aids to teach these students for the first hour and then to move and stay with them for the rest of the day, thus effectively assuring that they remain in separately identifiable racial groups.

3. Other racist projects

Greenville, Mississippi traces its emergency to the "politics of confrontation and antithesis strategies (sic) applied by inauthentic critics skilled in the use of negative propaganda and disruptive procedures." To meet this crisis, Greenville

was granted $30,580 to fund "some form of competent supervision and/or surveillance under the direction of legally constituted authority."

At least one district applied for and received an ESAP grant to pay the salary of a former black principal who was demoted when the school was desegregated. Humboldt, Tennessee is receiving $10,000 to pay the salary of the "black associate principal [who] can work closely with the black students as well as the whites." He was formerly principal of a black school in the district.

C. General aid to education

A substantial number of successful applicants sought ESAP funds to supplement their general education budgets by paying for more teachers, more janitors, more equipment and more supplies. While these expenditures may be worthwhile, they represent needs shared by all school systems, whether or not they are engaged in the process of desegregation. In some cases, the proposals did not even attempt to link the money to desegregation. In many others, the nature of the projects funded indicates that no more than lip service was paid to the requirement, explicitly set forth in the Regulations, that ESAP projects be designed to meet the special costs of desegregation.

1. Teacher aides and teacher training

Of the applications we have reviewed, more ESAP money went for teacher aides and teacher training than for any other single purpose. Frequently, no effort was made to tie the need for the aides to desegregation.

For example, Charlotte County, Virginia is receiving $11,100 to hire four aides so that the school libraries can be kept open during the entire school day.

Nassau County, Florida is receiving $25,000 to help in the district's "effort to improve our school system" by providing teacher aides and additional clerical personnel because "first grade teachers are required to do too much clerical duties" and "librarians offer little help to students, teachers and administrators."

Greenville, North Carolina is receiving $41,700 to employ 12 teacher aides to reduce time pressures on the regular teacher. This need was explained in terms of a recent defeat of a referendum to increase local financial support for the schools, which, together with the demand for higher salaries, had "necessitated a reduction in the number of locally paid personnel."

Laurel, Mississippi will spend $14,476 out of a $50,000 grant to train teachers in the use of certain unspecified equipment. Amite County, Mississippi is receiving $10,200 in ESAP funds to pay overtime stipends to the professional staff for their attendance at training programs designed to increase teaching efficiency through the explanation of "recent innovative techniques and methods . . ."

2. Textbooks and physical equipment

Millions of dollars of ESAP money have been allocated to the purchase of new classroom materials, including textbooks, and for the purchase of such items as playground equipment, softballs, ping-pong tables, intercom systems, "35 individual air-conditioning units in teacher stations," film strips, projectors, tape recorders, television sets and shower facilities. Many systems will use all or substantially all of their ESAP funds for expenditures of this kind.[3]

LaMarque, Texas will use half of its $30,941 ESAP grant to complete a television project at the high school. The school district had planned a central television studio and a closed circuit system connecting every classroom. But "due to lack of funds," the program was not completed. ESAP will now provide the money to finish wiring the classrooms, to buy movies and a tape recorder, and to pay the part-time salary of a person associated with the television program.

Wilson County, North Carolina will use part of its ESAP money to buy playground equipment, which was not available at any of the schools in the past, so that children can "work and play together successfully."

Sampson County, North Carolina will spend $21,000 in ESAP funds for equipment, including manual and electric typewriters, washers and dryers, steam irons and ironing boards, projectors, duplicators, microscopes, vacuum cleaners, a table, a lamp, two upholstered chairs, a commercial refrigerator and oven, piano casters, an automatic blanket cleaner attachment, and a kitchen sink.

Charleston County, South Carolina will use its $441,218 grant to establish a television studio—to equip it, air condition it, staff it and maintain it. Flagler County, Florida will use its entire $15,000 grant to renovate its physical education dressing room and shower facilities. The application states that "lack of a proper climate control system with an attending high humidity has brought about an

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understandable dissatisfaction on the part of both students and physical education teachers." The money will be used for the installation of an air and climate control system and for addition of more showers and toilets.

While many districts receiving money for general aid did not refer to desegregation, others made contrived attempts to link their general aid requests to the purposes of ESAP. For instance, Berrien County, Georgia sought and was granted money to purchase electric fans on the grounds that "a closed classroom in a South Georgia climate can be unbearably hot without [a] cooling system." The fans "should make students of all races more at ease in the classroom . . . ."

3. Curriculum revisions

Several districts have received grants for curriculum revision, with no effort to relate their proposals to problems incident to desegregation. Jackson, Mississippi, which was awarded the first and one of the largest ESAP grants, $1.3 million, is a case in point.

The Jackson application defines its emergency not as making desegregation work, but as saving the city from the effects of it. The application states:

"This change [court ordered desegregation] has created a crisis in the city. There are indications that unless rapid and dramatic improvement in the quality of education can be demonstrated . . . the City will suffer economically and socially . . . . Ways must be found immediately to redevelop the public schools so that they will merit and attract the confidence and support of all citizens in Jackson, Mississippi. There is evidence to indicate that unless this is done, educationally, socially and economically, Jackson will not grow but will be eroded by conditions that exist."

Over one-half of the 1.3 million dollars granted to Jackson was authorized for a general curriculum revision program which is simply designed to upgrade the quality of teaching in the school system.

Pinellas County, Florida proposes to use its entire $125,439 ESAP grant on "Project Read", a program designed "to dramatically increase the reading abilities of 3800 students" in the system. Referring to the success of this same program in Detroit, New York, and San Francisco, the application states:

"The inadequacy of conventional reading instruction in this country's large urban communities is a well established fact. . . . The typical student in the large urban school system is not learning to read adequately."

D. The minor role of community and student programs

In connection with congressional consideration of the Administration's school desegregation aid proposals and the development of the ESAP program, civil rights advocates experienced in the desegregation process strongly urged that the highest priority under any desegregation aid program be accorded to community and student projects, which would disseminate information about desegregation plans, bring students, teachers and parents together to discuss desegregation problems, and establish mechanisms through which students could resolve potentially volatile issues arising out of the desegregation process. HEW officials gave their assurances that projects of this kind would in fact be emphasized in the administration of the ESAP program.

The events of the past few months strongly corroborate the need for student and community programs to alleviate tensions associated with school integration. Almost daily, there have been press reports of racial incidents in desegregated schools.

In fact however, only a small number of districts received funds for programs involving student or community activities aimed at alleviating these kinds of problems. Of the 368 districts we reviewed, only 97 had community programs funded. In Georgia, for example, only 13 of 113 approved applications we reviewed included community programs. Only 1.7 percent of the money spent in Georgia was directed toward such programs.

Student programs received even less emphasis, with only 60 of the 368 districts receiving funds for programs of this kind. The student programs, in their entirety, accounted for less than two percent of all ESAP money allocated in the districts we reviewed. Many districts with very large grants and ostensibly comprehensive programs, such as Jackson, Mississippi; Nashville, Tennessee; Charleston, South Carolina; and Dougherty County, Georgia requested nothing for student programs.

E. Failure to fund comprehensive projects

ESAP has been administered on the principle that grants should be made to a large number of districts as quickly as possible. In implementing this principle,

the Title IV Office has abandoned the mandate of the Regulations, under which the decision whether and to what extent a district should be funded was to have been based on the promise the district's proposal showed of dealing comprehensively and effectively with special problems of desegregation.

The approved applications we reviewed supply evidence that the competitive approach was not followed. First, some proposals which did include a comprehensive treatment of desegregation, including student and community projects, were severely cut, apparently because the districts were not large enough to warrant grants of the size needed. On the other hand, a large number of very small grants were made—grants too small to deal comprehensively with the problems in the district.

For example, Beggs, Oklahoma proposed a series of biracial workshops for parents to discuss and attempt to resolve personal or emotional problems that may be occasioned by the integration of the schools. The $85,570 requested was reduced to $12,672, and the district abandoned its parent workshop program in favor of hiring a counselor and buying some instructional supplies.

Okmulgee, Oklahoma developed a $250,000 plan which included financial assistance to a biracial human relations committee and a home visitation program. Almost 80 percent of the request was denied, and the district struck from its proposal everything but teacher aides and a school bus.

Demopolis, Alabama applied for $177,754 to institute a comprehensive plan which included a community liaison staff, special pupil personnel services, teacher preparation programs, and student tutorial programs. The school district was granted only $27,664. Of this amount, $17,214 was allowed for an administrator with supporting clerical help, travel expenses and supplies, to "effectively administer the program"—a program which had been almost totally eliminated by the Office of Education.

By October 30, a total of 88 school districts had been awarded ESAP grants of less than $10,000 including several of less than $2,000. For example, Maury, Tennessee, with a request for $16,500 was awarded $1,500 which paid part of the cost of one bus. Hawkinsville, Georgia requested $64,000 but was granted only $5,000, which will be used to purchase supplies for industrial arts and vocational education classes. Numerous comparable examples could be cited. An unfortunate result of this approach is that there will be few, if any, models of the use of special federal funds to deal comprehensively with desegregation problems. Such models could have provided valuable lessons concerning the validity of the basic assumption of the Emergency School Assistance Program.

F. Conclusion

The grant-making process under ESAP apparently operated on the assumption that a general financial emergency existed in desegregating school districts, an emergency which could best be met by the distribution of some federal money to as many of these districts as could be reached in the shortest possible time. The administrators left it largely to school officials to define the nature of the desegregation emergencies in their districts; little in the way of direction or evaluation was provided by the Office of Education.

This administrative policy produced predictable results. In some instances, the projects funded were based on racist assumptions—that black children have special defects of character, that they are specially suited to training for menial jobs, that they have poor hygiene. Districts not even engaged in terminal desegregation were funded. The community participation provisions of the Regulations were weakly enforced. Most noticeably, large amounts of federal "desegregation money" was spent on projects which had little or nothing to do with desegregation. School officials asked for, and were given, more of the same—more hardware, more textbooks, more school supplies and more teachers and teacher aides.

The funding of racist projects and clearly ineligible districts could be remedied by minimal care in processing and evaluating grant applications, but the general demand for money for projects largely unrelated to desegregation might suggest that the whole program was ill-founded, that there never was any desegregation "emergency" requiring federal financial assistance. We do not believe this to be the case. Racial tension is high in many desegregating districts, and the mixing of black and white students in school buildings has often failed to produce a genuine integrated educational experience.

What is needed is precisely what many community leaders recommended to congressional committees and HEW officials last summer—human programs, designed to involve the students and the community directly in the process of

working out the problems of desegregation in the schools. By and large, these are not the kinds of programs school officials will spontaneously propose when federal money is made available. School administrators in the South, just as in the rest of the country, traditionally oppose the active involvement of parents, students and community people in the running of the schools.

One solution is to establish student and community projects as a high priority in grant programs like ESAP, and then to *enforce* that priority—if necessary, by rejecting nine-tenths of the grant proposals presented. A second solution is to take seriously the notion of funding programs developed and administered by community groups.

Chapter III

Civil Rights Compliance in Districts Receiving ESAP Grants

A. Introduction

Our monitors visited 467 southern school districts which were desegregating their systems this fall under HEW or court-ordered plans, and compiled reports describing the extent to which each district was following its desegregation plan, the extent to which racially discriminatory practices persisted in the schools after integration, and other data relevant to an evaluation of the desegregation process.[1] Of the monitored districts, 295 had received ESAP grants by October 30 of this year. In this chapter we summarize our monitors' findings from those 295 districts of practices which, under the terms of the ESAP Regulations or under the government's own interpretation of Title VI of the 1964 Civil Rights Act, render them ineligible for ESAP grants. Our report is not a comprehensive description of racially discriminatory practices in districts receiving ESAP grants. We have confined ourselves to noting practices clearly illegal under the standards the government purports to apply.[2]

Our findings about these districts are startling. In 179 of the 295 districts monitored, we found clear evidence of practices which should render the districts ineligible. In 87 districts, indications of illegal practices were found which raised serious questions about their eligibility. In only 29 districts—less than 10 percent—did we find no such evidence.

B. The results

1. Segregation and discrimination in pupil assignment

In 12 districts with ESAP grants, our monitors found clear evidence that the student assignment plan ordered by the court or approved by HEW had not been followed. In another four districts, we found evidence of desegregation plan violations sufficient to warrant further investigation.[3] The most common form of plan violation occurred where geographic zoning plans resulted in both majority black schools and majority white schools in the same district. White students in the majority black schools have been allowed to transfer out of these "neighborhood" schools, often with transportation provided at public expense, resulting in resegregation. In other instances, formerly black schools closed under desegregation plans have been reopened and the students who formerly attended them have been allowed to transfer back—a version of freedom of choice which results in resegregation, since whites never choose to attend these schools and none are assigned to them. As examples of this kind of violation:

—in McCormick, South Carolina, recipient of a $47,696 ESAP grant, whites have been allowed to transfer out of two formerly black elementary schools, thus completely resegregating those schools.

—in Demopolis, Alabama, recipient of $27,664, white students assigned to formerly black elementary schools were allowed to attend white schools outside their zones, and to ride the school buses to school. The school officials have informed the parents of these students that they are violating the court order, but they have stated that students may continue to attend the schools of their choice until they are removed "by action initiated and implemented by the Federal Courts."

—in St. Johns County, Florida, recipient of a grant of $40,725, the same pattern is followed of allowing white students to transfer from majority black to majority white schools, with bus transportation provided at public expense. Ironically, a strong desegregation plan originally proposed for St. Johns County was rejected because it required too much busing.

—in Vance County, North Carolina, recipient of $86,953, a formerly white school became 75 percent black. Three weeks after school opened, a formerly

Footnotes at end of article, pp. 16–17.

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black school closed by the plan was reopened, and blacks were allowed to transfer to it. A closed school, formerly white, was also reopened and white students transferred to it.

2. Segregation within integrated schools

Our monitors found 94 districts receiving ESAP grants which clearly engaged in illegal segregation of classrooms or facilities within schools. In another 18 districts, there are strong indications of such practices. The most widespread form of in-school segregation is the assignment of black and white children into separate classrooms. In many cases, this separation is carried out explicitly on the basis of race. Thus:

—in South Pike, Mississippi, recipient of a $21,300 ESAP grant, both black and white children are in grades 7–12 at the former Eva Gordon School. However, the classrooms in those grades are, with few exceptions, either all-black or all-white.

—in Pelham, Georgia, recipient of a $15,500 ESAP grant, the "special education" class is divided so that the white girls are in one room, and the white boys and all the black students are in another. In other instances, when their parents complained white children were allowed to transfer from integrated classes to all-white classes taught by white teachers.

—in Troy, Alabama, recipient of a $28,300 ESAP grant, the court ordered the formerly black and formerly white high schools merged. The school district "complied" by renaming the black school Henderson High School, South Campus (Henderson is the name of the white school), firing the black principal and replacing him with a white, and leaving the black students there. Indeed, fewer black students now attend the white high school than did previously under freedom of choice.

In most instances, however, classroom segregation has been achieved through testing children and separating them into different "tracks" in different classrooms. Generally the upper tracks are all-white or nearly all-white, while the lower tracks are nearly all-black; typically, black teachers are assigned to the lower tracks and white teachers to the upper tracks. There can be no question about the illegality of ESAP grants to districts engaging in this common practice, for the Regulations explicitly bar all practices "including testing" which "result in" the isolation of black or white children.[4]

—Troy, Alabama, already mentioned, provides a classic illustration of tracking. Troy Junior High, grades 5–8, is almost totally racially segregated between class sections, through the use of a new highly structured track system, not used before desegregation, which divides students into Advanced Academic, Vocational, and Special Education tracks. Other examples from the dozens of cases of segregation through testing are:

—McCormick, South Carolina, mentioned above, introduced extensive testing last spring, with the testing reportedly paid for by federal Title I funds. As a result, one of the newly integrated elementary schools contains eight totally black classrooms. No black teachers are teaching white students. It is reported that at the beginning of the year, there were "Negro only" signs on some classroom doors, and black teachers were given class roll books labeled "all-Negro." The district's ESAP grant is for a classroom for "special education," i.e., a lower track class likely to be all-black.

—England, Arkansas, recipient of an $18,100 ESAP grant, also introduced a new testing program last year on the eve of integration and, as a result, now has virtually all-black lower track classes to which most of the black teachers have been assigned.

—Union City, Tennessee, recipient of a $12,500 ESAP grant, tested students into fast, middle and slow tracks. Only one black student in the whole system is in the fast track, and several slow track classes have only one white student each.

Another device used to accomplish segregated education within a school is double sessions. Thus in Seminole County, Florida, with a grant of $80,000 the plan called for a desegrated high school. However, officials arranged double sessions according to where students live, so that one shift is disproportionately white and the other disproportionately black.

In other districts, while black and white children sit in the same classroom, they are assigned seats according to race. Among these districts are Plum Bayou, Arkansas, recipient of a $16,300 ESAP grant, and Jones County, Mississippi,

Footnotes at end of article, pp. 16–17.

$35,500. In Carthage, Texas, recipient of $47,400, white and black students are separated within a classroom by blackboards placed down the middle of the room.

In a few schools, segregation is maintained outside the classroom. Thus in Fitzgerald, Georgia, recipient of $19,090 in ESAP money, black and white girls in at least one physical education class are assigned to separate showers. Similarly in Jefferson, Texas, a $33,500 ESAP recipient, junior high school students dress for physical education class in racially segregated dressing rooms. Alexander City, Alabama, $33,824, has segregated its recreation areas in two separate and unequal facilities at different schools.

3. Segregated transportation

Our monitors found 47 clear and 10 questionable instances of segregated or discriminatory school bus operations in ESAP-assisted districts. This total does not include instances in which residential segregation produced all-black or all-white buses.

The most common phenomenon is simply duplicate bus routes in which buses driven by black and white drivers follow the same route, picking up black and white students respectively. Among the numerous ESAP-assisted districts following this practice are Eudora, Arkansas, $20,431, and Monroe County, Alabama, $100,268. In Monroe County, Georgia, recipient of $35,220 in ESAP money, the superintendent admitted the buses are segregated and said this is done because bus drivers are not qualified to handle difficulties which might arise on integrated buses. In other districts, for example, Calhoun County, Georgia, recipient of $24,400 ESAP grant, the classic Jim Crow pattern of segregated seating is followed.

4. Racially indentifiable faculties

The ESAP Regulations require an assurance from each applicant that it will so assign its faculty and other staff who work with students that the ratio of black to white faculty and staff in each school will be substantially the same in each school in the system.[5] This rule is generally applied in school desegregation cases by courts in the Fourth and Fifth Circuits, which cover most of the Deep South; it has been approved by the Supreme Court; and it was adopted by President Nixon as policy for his Administration in his March 24, 1970 statement on school desegregation.[6]

Our monitors found at least 62 school districts in which the percentage of black faculty varied in excess of 15 percent from one school to another. White teachers tend to be assigned to majority white schools, formerly white schools, and higher grade level schools in greater numbers. Examples are highly repetitive. but a few representative cases are:

—Nansemond County, Virginia, with an $80,400 ESAP grant, has a 58 percent white faculty at the majority white high school, a 63 percent black faculty at the black high school, and an 86 percent black faculty at a majority black elementary school.

—Decatur County, Georgia, with an $80,000 grant, has three schools with all-black student bodies under its court order; these schools' faculties are 70, 73 and 100 percent black respectively, while the remaining nine majority white schools all have majority white faculties.

—West Orange-Cove, Texas, with a grant of $49,080, has an overall black faculty ratio of 18 percent, but only three of 13 schools are close to that ratio. Five have no black teachers at all; in one, over half the teachers are black, and two have 40 percent black faculties.

5. Discrimination against black teachers and staff

The ESAP Regulations clearly prohibit racial discrimination in the hiring, firing, promotion or demotion of teachers, principals and other school staff who work with students.[7] Our monitors found that black teachers, principals, coaches and other staff are being fired or demoted in massive numbers in districts implementing desegregation plans. Especially in smaller districts, desegregation often means that fewer schools are operated; this invariably means that there are fewer principals and head coach positions, and it often means a general reduction of faculty size as well. Typically, where a black and white school have been merged, the black principal becomes the white principal's assistant in the integrated school, often with few or only menial responsibilities; the black coaches become assistant coaches; and if teachers are released, they are mostly black teachers.

Footnotes at end of article, pp. 16–17.

In analyzing our monitors' reports, we have counted as clear instances of discrimination only cases in which blacks were demoted to serve under whites with lesser qualifications, or in which such disproportionately large numbers of blacks were demoted or dismissed as to indicate a pattern of discrimination. In other cases, where our monitors could not obtain evidence of the qualifications of those dismissed or demoted, and where only a few individuals were affected, we have listed the district as "questionable."

Applying these criteria, we found 98 ESAP districts with clear violations, and 123 districts with questionable cases of dismissals or demotions of black teachers—a total of 221 out of the 295 ESAP districts monitored. We believe that even these remarkable figures understate the extent of the problem of discrimination against black teachers and staff, because our monitors did not systematically gather data on discrimination in the *hiring* of blacks. However, informal reports we have received indicate that discrimination in hiring is also widespread.

A few representative examples of discriminatory dismissal or demotion are:

—in Gadsden County, Florida, recipient of a grant of $133,300, most of the untenured black teachers were dropped. Many new white and no new black teachers were hired. A black elementary school principal was demoted to assistant principal of an integrated school under a white with no previous experience as a principal.

—in Miller County, Georgia, recipient of a grant of $11,000, a black man with 22 years' experience as a principal in a black high school, a master's degree in administration, and post-graduate work in guidance and counseling has been made "co-principal" of an integrated high school, where his chief functions are to hand out free lunch passes and patrol the halls. A white with lesser credentials has been appointed principal. The white had been a principal before but had returned to classroom teaching a few years ago, when a few black students came to the white school under freedom of choice, reportedly because he was opposed to integration. In the same district, the black coach and band director were both demoted.

—in Sumter County, Georgia, $30,350 grant, both black band teachers were fired. The black principal, with 12 years experience in his job, was made administrative assistant to the superintendent," with an office in the jailhouse unit of the courthouse. His wife, formerly curriculum director at the black high school, shares his new office with him. Their duties are limited to "visiting" the schools in the district.

—in Horry County, South Carolina, $180,145 grant, one black principal was made director of vocational education, six were made assistant principals, and two were made classroom teachers.

—in Choctaw County, Alabama, $69,916 grant, the contracts of 19 black teachers were not renewed, and the two black band directors and all three black coaches were demoted and their salaries were reduced.

—in Shelbyville, Texas, $17,200 grant, some of the black teachers assigned to formerly white schools were made assistants to white teachers, and were not given their own homerooms. One of the black principals was retired and the other was made a classroom teacher.

6. Aid to segregation academies

In recent years, large numbers of all-white private schools, many of them small, underfinanced and with inadequate facilities, have been established in the South as alternatives to desegregated public schools. To deal with the problem of aid and support to these "segregation academies" from public school systems, the ESAP Regulations require each applicant to give assurances that it has not transferred goods or services to any private school which "practices discrimination on the basis of race" with the purpose of encouraging or supporting the private school as an alternative for desegregated public schools. The Regulations further require that ESAP-assisted districts will not in the future transfer goods or services for any purpose to private schools which discriminate on the basis of race. [8]

Our monitors had difficulty obtaining information about "segregation academies" generally, and about public school assistance to them in particular. In many cases these facts are known at first hand only by people with strong motivations to conceal them. Nevertheless, we found 13 clear cases of financial support of private schools by public school systems and 39 cases in which there are indications of such support. Aid generally took the form of sale of public school buildings for less than value, and the loan or gift of textbooks, school equipment, buses, or bus service.

Footnotes at end of article, pp. 16–17.

It was still more difficult to determine whether the schools practiced discrimination on the basis of race in the narrow sense that they would refuse admission to a qualified black applicant who was able to pay the tuition. Few black parents in the South can afford private school tuition, and even fewer would wish to send their children to schools of the "segregation academy" type. However, the Internal Revenue Service recently ruled that in order to receive or maintain tax exempt status, private schools must publish in a local newspaper a statement of open admissions policy. Our monitors generally asked whether such a statement had been published by the private schools in the districts they visited. With respect to 11 of the 13, it was reported that no such statement had been published. The monitors could not obtain the information on the other two.

We take the position, however, that in determining whether a private school is "discriminating" within the meaning of the Regulations, it is irrelevant whether a private school has a formal "open admissions" policy. In our view, the Regulations forbid grants to public school systems which give aid or support to private schools established with the purpose, and having the effect, of providing alternative schooling for whites attempting to avoid the impact of a constitutionally required plan of school desegregation. As a rough indicator of whether a private school falls within this category, we have examined the date of its establishment and the makeup of its student body. If the school was established at about the time public school desegregation came to its area, and its student body is all-white, we have identified it as a "segregation academy."

Among the examples of public assistance to segregation academies are:

—in Lauderdale County, Tennessee, recipient of a $65,000 grant, a relatively new black public school was closed in 1969, and the building has since been sold at "token cost" to the operators of a private school.

—in Thomas County, Georgia, recipient of a $36,000 grant, the school board leased a public school building to the Thomasville City school district, itself the recipient of a $69,000 ESAP grant, which in turn leased it to Meigs Academy for one dollar a year.

—in several Mississippi districts receiving ESAP, Claiborne, Jefferson, Scott and Smith Counties, school officials have provided textbooks to private schools, apparently at the direction of the State Department of Education. A similar incident was reported by the press in Jackson, Mississippi, shortly after that district received its $1.3 million ESAP grant; state and local officials admitted that textbooks had been loaned to the private academies, but justified it on the ground that the books were owned by the State Department of Education, and the ESAP Regulations applied only to aid by local school systems.

—in Hinds County, Mississippi, recipient of a $190,000 grant, public school buses with markings from several Mississippi districts, including Hinds County and Jackson, have been observed transporting children to private schools.

C. Conclusion

A large proportion of the ESAP-funded districts that we monitored are engaged in discriminatory practices specifically prohibited by the Regulations. In most instances, these practices also violate Title VI, and should bar all federal financial assistance to those districts.

In several reports, the use of ESAP money to subsidize school districts engaging in widespread racial discrimination is worse than the familiar failure to enforce Title VI.

First, it amounts to a fraud upon Congress. The Secretary of HEW explicitly promised a Senate committee that Title VI would be strictly enforced in the administration of this program. Secretary Finch's words are worth quoting again:

"We, under no circumstances, will fund districts out of compliance with Title VI—those who fire or demote anyone on the basis of race or with segregated classrooms or other basic things that you mentioned."

Second, making ESAP grants to districts engaged in these discriminatory practices amounts to HEW's acquiescence in fraud perpetrated by local school officials. The ESAP Regulations were carefully drafted to require that each applicant guarantee that it would *not* engage in the practices prohibited by those Regulations—among them racial discrimination in the hiring, firing, promotion and demotion of staff; the racially imbalanced assignment of staff within the school system; the use of devices, including testing, which lead to racial isolation

of children within the school; and aid to private schools which practice racial discrimination. These assurances have been breached by a clear majority of ESAP grant recipients.

Finally, while it is always deplorable for the federal government to subsidize public agencies engaged in racial discrimination, it is worse when funds designed to facilitate the process of school desegregation are granted to districts openly and flagrantly pursuing racist policies which insult and degrade black children.

RECOMMENDATIONS

In this report, we have documented widespread misuse ESAP funds and discrimination against black children in ESAP recipient districts. This is unconscionable in any federal program; it is particularly so in a program designed to help bring an end to discrimination and promote equality of educational opportunity.

It is imperative that responsible federal officials act without delay to retrieve what remains of ESAP. It is still possible to correct some of the mistakes because no ESAP-assisted district has received more than 25 percent of its grant.

Therefore, we recommend:

—That the Secretary of HEW immediately conduct civil rights compliance reviews and terminate ESAP funds to districts which are engaging in discriminatory practices. Moreover, efforts should be made to recover ESAP money already given to these districts;

—That HEW undertake now a detailed review of all ESAP grant applications which have been approved. In cases where the grants are not being used to contribute to the desegregation process, funding should be discontinued;

—That priority be given to the distribution of the ESAP funds reserved for private groups.

FOOTNOTES

Chapter I

[1] The emergency funds for ESAP were appropriated under authorizations granted in six statutes: the Educational Professions Development Act, Part D (20 U.S.C. 1119–1119a); The Cooperative Research Act (20 U.S.C. 331–332b); the Civil Rights Act of 1964, Title IV (42 U.S.C. 2000c–2000c–9); the Elementary and Secondary Education Act of 1965, section 807 (20 U.S.C. 887); the Elementary and Secondary Education Amendments of 1967, section 402 (20 U.S.C. 1222); and the Economic Opportunity Act of 1964, Title II (42 U.S.C. 2781–2837).

[2] Hearings on the administration's proposal were held before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare ("Pell Hearings"), on June 9 and June 30, 1970; and before the Senate Select Committee on Equality of Educational Opportunity ("Mondale hearings"), on June 16, 22 and 24, 1970. The concerns noted in the text were expressed by Senators Mondale and Kennedy at the June 9 Pell hearing, by Winifred Greene and M. Hayes Mizell of the American Friends Service Committee and Melvyn Leventhal of the NAACP Legal Defense Fund at the Mondale hearings, and by Marian Wright Edelman of the Washington Research Project at the Pell hearings.

[3] Pell hearings, at page 57 (printed record).

[4] Pell hearings, at page 53.

[5] P.L. 91–380. "Emergency School Assistance. For assistance to desegregating local educational agencies as provided under Part D of the Educational Professions Development Act (Title V of the Higher Education Act of 1965), the Cooperative Research Act, title IV of the Civil Rights Act of 1964, section 807 of the Elementary and Secondary Education Amendments of 1965, section 402 of the Elementary and Secondary Amendments of 1967, and title II of the Economic Opportunity Act of 1964, as amended, including necessary administrative expenses therefor, $75,000,000: Provided, That no part of any funds appropriated herein to carry out programs under title II of the Economic Opportunity Act of 1964 shall be used to calculate the allocations and proration of allocations under section 102(b) of the Economic Opportunity Amendments of 1969: Provided further, That no part of the funds contained herein shall be used (a) to assist a local educational agency which engages, or has unlawfully engaged, in the gift, lease or sale of real or personal property or services to a nonpublic elementary or secondary school or school system practicing discrimination on the basis of race, color, or national origin; (b) to supplant funding from non-Federal sources which has been reduced as the result of desegregation or the availability of funding under this head; or (c) to carry out any program or activity under any policy, procedure, or practice that denies funds to any local educational agency desegregating its schools under legal requirement, on the basis of geography or the source of the legal requirement."

[6] 45 C.F.R. Part 181.2 The Emergency School Assistance Program Regulations are to be found at 45 C.F.R. Part 181. They are cited herein as. Regs.

[7] Regs. 181.10.

[8] Regs. 181.4(c)–(d).

[9] Regs. 181.6(a)(4)(D)–(G).

[10] Regs. 181.6(a)(4)(B)(ii).

[11] Regs. 181.7.

[12] Regs. 181.8.

[13] Regs. 181.3(b)–(c).

[14] The Division of Equal Educational Opportunity administers the program of federal grants, authorized by Title IV of the Civil Rights Act of 1964, to provide technical assistance to school districts undergoing desegregation.

[15] These accounts of the meetings between Title IV officials and local school officials are based on reports by staff members of the American Friends Service Committee and the Washington Research Project, who attended meetings held in Alabama, Louisiana, Texas and Virginia.

[16] At a meeting between Title IV officials and local school officials, held August 24, 1970 in Austin, Texas, and attended by a member of the Washington Research Project staff, a Texas state education official stated

that Title IV officials had told him that they expected that most of the money set aside for grants to private groups would not be spent for that purpose, but would be reallocated for use by school officials.

Chapter II

[1] Regs. 181.3(a)(1) and 181.7(b)(1).
[2] Regs. 181.7(b)(1)-(2).
[3] Examples of such uses were found in the following Georgia applications: Berrien County, Lee County, Madison County, Monroe County, Oconee County, Oglethorpe County, Toombs County, Wheeler County.

Chapter III

[1] Our monitoring effort is described in more detail in Appendix A.
[2] We have not included the extensive reports received of other racially discriminatory practices not explicitly prohibited under government interpretation of Title VI or under the ESAP Regulations, even though we believe that these practices constitute violations of Title VI, and hence should rule out all federal financial assistance for these districts. Among these practices are segregation of students by sex, when initiated with desegregation; the abandonment of extracurricular activities, especially dances, student clubs, and student government activities, when the schools are integrated; the use in integrated schools of racially insulting symbols, such as Confederate flags, nicknames such as "Rebels" for school teams, the playing of "Dixie" by school bands at sporting events; discriminatory treatment of black students in school discipline; and the consistent use of abusive racial epithets by teachers and administrators. We do not mean to downgrade the importance of these abuses by omitting them from this study; indeed they have been the source of much of the anger and frustration felt by black students and parents in "integrated" schools this year. We plan a full exposition of these problems and other matters in the complete report of our monitors effort.
[3] A list of the ESAP districts in which violations were found, under each of the categories we have considered, is included in Appendix C-I.
[4] Regs. 181.6(a)(4)(G).
[5] Regs. 181.6(a)(4)(F).
[6] Regs. 181.6(a)(4)(C).
[7] Regs. 181.6(a)(4)(E).
[8] Regs. 181.6(a)(4)(D).

Appendix A

A DESCRIPTION OF THE SCHOOL DESEGREGATION MONITORING PROJECT

With the assistance of students from Bishop College (Dallas, Texas), Fisk University (Nashville, Tennessee), and Virginia State University (Petersburg, Virginia) and staff of the Urban Coalition, the organizations responsible for this report monitored some 467 school districts in eleven southern states (as part of a larger study of the desegregation process in the South this fall). We attempted to monitor all the districts undergoing terminal desegregation during 1970–71 school year, either under voluntary plans approved by HEW or under court orders entered in cases instituted by the United States. This excluded many districts eligible for ESAP grants: districts with 1968–69 or 1969–70 terminal desegregation plans, and districts with 1970–71 terminal plans imposed by court order in cases with private plaintiffs. We did monitor 79 districts in Alabama which are under court order in a case brought by private plaintiffs, and in which the United States has intervened as co-plaintiff. The 467 districts monitored include 295 of the 722 which had received ESAP grants by October 30, 1979.

The monitoring effort was largely carried out between September 18 and September 27, 1970, under the direction of staff employees of the organizations which have prepared this report. The largest group of monitors were volunteer lawyers, working under the auspices of the Lawyers' Committee for Civil Rights, Under Law. Other monitors included the staffs of the sponsoring organizations, college students, and in some instances citizens resident in the districts in question who have been involved with school issues in that district. All monitors used a uniform information form, drawn up by the sponsoring organizations, to record the data they collected. Monitoring activities in each state were coordinated by an individual with long experience both in school desegregation issues and in working with southern communities. Each state coordinator conducted a training session for the monitors working within his state before they went into the field. Great stress was placed upon techniques of objective data collection with emphasis on interviewing persons with different points of view in the community, blacks and whites, school administrators, principals, teachers, parents and students. In each case, monitors were instructed to seek an appointment with the school superintendent or his representative, and to attempt to obtain access to official school records of student and faculty assignment and similar hard data. In reporting information, monitors were instructed to distinguish between rumors and "what everybody knows" on the one hand, and eyewitness reports and data from official records on the other.

We gathered the facts as they were in late September; our resources have not permitted updating of our information. Thus in some districts, conditions and practices reported here may have been corrected by the time this report appears. On the other hand, illegal practices may have arisen in other districts since our monitors visited them.

In analyzing reports, we have listed as "clear violations" of applicable legal standards only cases in which facts related to our monitors, based on the first-hand knowledge of the relator, established illegality. Where our monitors obtained only second-hand reports of facts supporting a charge of a violation, or where the facts related suggest but do not compel an interference of racial discrimination, we have listed the case as questionable.

Appendix B

List of 368 approved ESAP applications reviewed

Alabama

Alexander City Board of Education
Andulusia City
Auburn City Schools
Baldwin County Board of Education
Brewton City Schools
Butler County Board of Education
Clay County Board of Education
Conecuh County Board of Education
Dale County Board of Education
Decatur City Schools
Demopolis City Schools
Dothan City Board of Education
Elba City Board of Education
Eufaula City Board of Education
Fairfield City Board of Education
Lamar County Board of Education
Lanette City Schools
Lee County Board of Education
Limestone County Board of Education
Monroe County Board of Education
Randolph County Board of Education
Russell County Board of Education
St. Clair County Board of Education
Sylacauga City Board of Education
Troy City Board of Education

Arkansas

Ashdown School District #31
Camden School District #35
Crossett School District #52
Eudora Special School District
Monticello School District #18
Newport Special School District
Prescott School District #14
Saratoga School District #11

Florida

Alachua County School Board
Bradford County School Board
The School Board of Brevard County
Calhoun County School Board
Collier County School Board
Columbia County School Board
Dade County Public Schools
Duval County School Board
Flagler County School Board
Gadsden County Public School System
Glades County School Board
Gulf County School Board
Hamilton School Board
District School Board of Hendry County
District School Board of Hernando County
Highlands County School Board
Hillsborough County Board of Public Ins.
Indian River County School Board
Jackson County School Board
Jefferson County School Board
Lafayette County School Board
District School Board of Lake County
District School Board of Lee County
District School Board of Madison County
Martin County Board of Public Ins.
Nassau County Board of Public Ins.
Board of Public Ins. of West Palm Beach County
The School Board of Pinellas County
District School Board of Putnam County
Seminole County District School Board
St. Johns County School Board
Sumter County School Board
Suwannee County School Board
Taylor County School Board
Walton County BPI
Washington County School District

Georgia

Appling County Board of Education
Atkinson County Board of Education
Baker County Board of Education
Baldwin County Board of Education
Barrow County Board of Education
Ben Hill County Board of Education
Berrien County Schools
Bibb County Board of Education
Bleckley County Board of Education
Brooks County Schools
Bryan County Board of Education
Buford City System
Burke County Board of Education
Butts County School System
Calhoun County Board of Education
Camden County Board of Education
Candler County Board of Education
Carroll County Board of Education
Carrollton County Board of Education
Cartersville School Board
Clarke County School District
Clay County Board of Education
Clinch County Board of Education
Cochran City Schools
Coffee County Board of Education
Columbia County Board of Education
Cook County Board of Education
Coweta County School System
Crawford County Board of Education
Crisp County School System
Decatur County Board of Education
City Schools of Decatur

Georgia—Continued

DeKalb County School System
Dodge County Board of Education
Dooly County Board of Education
Douglas County Board of Education
Dougherty County School System
Dublin City Board of Education
Early County Board of Education
Echols County Board of Education
Effingham County Board of Education
Fayette County Board of Education
Fitzgerald City Board of Education
Franklin County Board of Education
Gainsville City Board of Education
Glynn County Board of Education
Grady County Board of Education
Griffin-Spalding County Board of Education
Hall County Board of Education
Haralson County Board of Education
Hart County Board of Education
Hawkinsville City School System
Heard County Board of Education
Henry County Board of Education
Hogansville County Schools
Houston County Schools
Jasper County Schools
Jeff Davis County Schools
Jefferson County Schools
Jones County Schools
LaGrange Public Schools
Lamar County Board of Education
Lanier County Board of Education
Laurens County School System
Lee County School System
Liberty County School System
Lincoln County Board of Education
Lowndes County Board of Education
Macon County Board of Education
Madison County Board of Education
Marietta City Schools
McDuffie County Board of Education
McIntosh County Board of Education
Meriwether County Board of Education
Miller County Board of Education
Monroe County Board of Education
Montgomery County Board of Education
Morgan County Board of Education
Newton County Board of Education
Oconee County Board of Education
Oglethorpe County Board of Education
Peach County Board of Education
Pelham Board of Education
Pierce County Board of Education
Pike County Board of Education
Polk County School District
Quitman County Board of Education
Randolph County Board of Education
Rome Board of Education
Screven County Board of Education
Stephens County Board of Education
Stewart County Board of Education
Sumter County Board of Education
Talbot County Board of Education
Taliaferro County Board of Education
Tift County Board of Education
Toombs County Board of Education
Treutlen County Board of Education
Turner County Board of Education
Twiggs County Board of Education
Walker County Board of Education
Vidalia City Board of Education
Walton County Board of Education
Warren County School System
Washington County Board of Education
Waycross Public Schools
Wayne County Board of Education
West Point Public Schools
Wheeler County Board of Education
Wilcox County Board of Education
Wilkes County Board of Education
Wilkinson County Board of Education
Winder City Board of Education

Kentucky

Jefferson County Public Schools
Paducah Ind. School District

Maryland

Prince George's County Public Schools

Mississippi

Amite County Schools
Amory Public Schools
Attala County School District
Baldwin Separate School District
Bay St. Louis Separate School District
Benton County Schools
Bolivar County School District No. 1
Brookhaven Municipal Separate School District
Choctaw County School District
Claiborne County Schools
Clay County Board of Education
Copiah County School District
Covington County Schools
DeSoto County Schools
Forest Separate School District
Franklin County Board of Education
Greene County Schools
Greenwood Municipal Separate School District
Hattiesburg Public Schools
Hinds County Public Schools
Itawamba County Schools
Jackson Municipal Separate School District
Jefferson County Schools

Mississippi—Continued

Kosciusko Municipal Separate School District
Lafayette County Board of Education
Laurel Municipal Separate School District
Leake County School Board
Lee County School District
Leflore County School District
Louisville Municipal, ISD
Lumberton Line Consolidated School District
Madison County Schools
Marion County Schools
Marshall County Schools
McComb Municipal Separate School District
Monroe County Schools
Montgomery County School System
New Albany Municipal Separate School District
Newton County Unit
Newton Special Municipal Separate School District
North Pike Consolidated School District
Noxubee County Schools
Ocean Springs Municipal Separate School District
Oktibbeha County Schools
Pascagoula Municipal Separate Schoo District
Pass Christian School District
Poplarville Special Municipal Separate School District
Prentiss County Schools
Rankin County Schools
Richton Municipal Separate School District
Scott County Unit
Smith County Schools
Starkville Municipal Separate School District
South Pike County Consolidated School District
South Tippah Consolidated School District
Tupelo Municipal Separate School District
Union Municipal Separate School District
Water Valley Line Consolidated School District
Walthall County School System
Webster County School District
Winona Municipal Separate School District
Yazoo City Municipal Separate School District
Greenville Municipal Separate School District

North Carolina

Anson County
Camden County
Caswell County
Clinton City
Craven County
Durham County
Elm City
Greene County
Greenville City
Hoke County
Iredell County
Johnston County
Kings Mountain City
Lexington City
Martin County
Monroe City
Person County
Robeson County
Rockingham County
Sampson County
Shelby City
Stanly County
Thomasville Board of Education
Wayne County
Wilson County

Oklahoma

Beggs Public Schools
Chickasha Public Schools
Gutherie Independent School District #19
McAlester Public Schools
Muskogee City
Okmulgee Public Schools

South Carolina

Abbeville County #60
Aiken County (Consolidated) School District
Allendale County #1
Anderson County #1
Bamburg School District #1
Berkeley County School District
Charleston County
Darlington County
Dillon School District #2
Fairfield County
Florence County #1
Florence County #2
Florence County #5
Greenwood School District #50
Greenwood County #52
Hampton North #1
Hampton County #2
Horry County
Kershaw County
Lancaster County
Lee County

South Carolina—Continued

Marion County #3
Newberry County
Oconee County
Orangeburg County #4
Orangeburg County #5
Orangeburg County #6
Orangeburg County #7
Richland County #2
Union County
York County #4

Tennessee

Alamo City
Bells City
Chester County
Cleveland City
Covington City
Gibson County
Hardeman County
Henderson County
Hickman County
Humboldt City
Jackson City
Lake County
Lauderdale County
Metropolitan Public Schools—Nashville (Davidson County)
Lebanon City
Madison County
McNair County
Maury City
Milan City
Murfreesboro City
Robertson County
Shelby County
Tipton County
Trousdale County
Union City
Williamson County
Wilson County

Texas

Center ISD
Cypress-Fairbanks ISD
Galena Park ISD
Goresbeck ISD
Hemphill ISD
Jasper ISD
Kaufman ISD
LaMarque ISD
Liberty ISD
Malakoff ISD
New Diana ISD
Pittsburg County—Line Consolidated ISD
Smithville ISD
Wichita Falls ISD
West Sabine ISD

Virginia

Bedford County
Buckingham County
Charlotte County
Glouchester County
Halifax County
Isle of Wight County
Louisa County
Matthews County
Nelson County
Norfolk City
Northampton Schools
Powhatan County
Prince George County
South Boston City
Suffolk City
Westmoreland—Colonial Beach Schools

Appendix C

SCHOOL DISTRICTS RECEIVING ESAP FUNDS THAT ARE VIOLATING THEIR HEW OR COURT ORDERED DESEGREGATION PLAN

Alabama

Clear violations:
- Demopolis City
- Troy City

Questionable violations:
- Barbour County

Florida

Clear violations:
- Gadsden County
- Pinellas County
- St. Johns County

Questionable violations:
- Orange County

North Carolina

Clear violations:
- Martin County
- Vance County

South Carolina

Clear violations:
- Fairfield County
- Florence County #1
- McCormick County
- Orangeburg County #3
- Sumter County #17

Questionable violations:
- Lee County

Tennessee

Questionable violations:
- Lauderdale County

APPENDIX D

DISTRICTS WITH CLASSROOM SEGREGATION

Alabama

Clear violations:
- Baldwin County
- Barbour County
- Butler County
- Choctaw County
- Conecuh County
- Coosa County
- Decatur City
- Demopolis City
- Enterprise City
- Eufala City
- Montgomery County
- Monroe County
- Pike County
- Selma City
- Troy City
- Walker County

Questionable violations:
- Elba City

Arkansas

Clear violations:
- Crawfordsville
- England
- Plum Bayou
- Stuttgart

Questionable violations:
- Bright Star
- Helena-W. Helena
- Lonoke

Florida

Clear violations:
- Baker County
- Flagler County
- Jefferson County
- Lake County
- Pinellas County
- Seminole County
- St. Johns County
- Sumter County

Questionable violations:
- Escambia

Georgia

Clear violations:
- Brooks County
- Calhoun County
- Clay County
- Crawford County
- Early County
- Jefferson County
- Johnson County
- Lowndes County
- McDuffie County
- Meriwether County
- Miller County
- Monroe County
- Pelham City

Georgia—Continued

Clear violations—Continued
- Putnam County
- Sumter County
- Toombs County
- Treutlen County
- Twiggs County
- Vidalia City
- Warren County
- Washington County
- Waycross City
- Wilkes County
- Wilkinson County

Questionable violations:
- Candler County
- Echols County
- Hancock County
- Screven County
- Stephens County-Toccoa
- Thomas County
- Thomasville City
- Turner County
- Wheeler County

Mississippi

Clear violations:
- Jones County
- Kociusko MS
- McComb MS
- South Pike

Questionable violations:
- Choctaw County

North Carolina

Clear violations:
- Gates County
- Hertford County
- Martin County
- Richmond County
- Union County
- Vance County

South Carolina

Clear violations:
- Aiken County
- Berkeley County
- Charleston County
- Chester County
- Dillon County #2
- Dillon County #3
- Edgefield County
- Kershaw County
- Lee County
- Marlboro County
- McCormick County
- Newberry County
- Orangeburg County #2
- Orangeburg County #3
- Orangeburg County #6
- Sumter County #17
- Union County

Tennessee

Clear violations:
Gibson County
Humboldt City
Lake County
Lauderdale County
Union City

Texas

Clear violations:
Carthage
Crosby
Cypress-Fairbanks

Texas—Continued

Clear violations—Continued
Jefferson
San Augustine
Tyler
Questionable violations:
West Orange-Cove
Crockett
Palestine

Virginia

Clear violations:
Southampton County

Appendix E

DISTRICTS WITH SEGREGATION IN OTHER FACILITIES

Alabama

Clear violations:
Alexander City

Georgia

Clear violations:
Atkinson County
Fitzgerald City

North Carolina

Clear violations:
Martin County

South Carolina

Clear violations:
Union County:

Tennessee

Clear violations:
Gibson County

Texas

Clear violations:
Jefferson

Appendix F

DISTRICTS WITH SEGREGATED TRANSPORTATION

Alabama

Clear violations:
Baldwin County
Butler County
Choctaw County
Monroe County
Opelika City
Tallapoosa County

Arkansas

Clear violations:
Eudora
Questionable violations:
Emmet

Florida

Clear violations:
Jackson County
Jefferson County
Pinellas County
Seminole County
Questionable violations:
Bradford County
Sumter County
Taylor County

Georgia

Clear violations:
Americus City
Atkinson County
Baker County
Calhoun County
Clay County
Dodge County
Early County
Echols County
Grady County
Johnson County
McDuffie County
Miller County
Mitchell County
Monroe County
Pelham City
Randolph County
Toombs County
Treutlen County
Turner County
Warren County
Washington County
Wilcox County
Wilkes County
Wilkinson County

Georgia—Continued

Questionable violations:
Clinch County
Fitzgerald City
Laurens County
Twiggs County
Wheeler County

Mississippi

Clear violations:
Claiborne County
Jones County
South Pike

South Carolina

Clear violations:
Florence County #1
Greenwood County #52

South Carolina—Continued

Clear violations—Continued
Kershaw County
Orangeburg County #6
Union County

Tennessee

Clear violations:
Brownsville-Haywood
Questionable violations:
Alamo City

Texas

Clear violations:
Alamo City
Cypress-Fairbanks
Jefferson
San Augustine

APPENDIX G

DISTRICTS WITH RACIALLY IDENTIFIABLE FACULTIES

Alabama

Clear violations:
Brewton City
Conecuh County
Monroe County
Montgomery County
Opelika City
Pike County
Walker County

Arkansas

Clear violations:
Ashdown
Camden
Elaine
Helena-W. Helena
Holly Grove
Hot Springs
Parkin Special
Stephens
Questionable violations:
Lonoke

Florida

Clear violations:
Flagler County
Jefferson County

Georgia

Clear violations:
Americus City
Atkinson County
Brooks County
Bryan County

Georgia—Continued

Clear violations—Continued
Charlton County
Decatur County
Elbert County
Fitzgerald City
Grady County
Hancock County
Hart County
Henry County
Jefferson County
Tift County
Warren County
Washington County
Waycross City
Wilcox County
Wilkes County
Questionable violations:
McIntosh County

Mississippi

Clear violations:
De Soto County
Jones County
South Pike
Tupelo MS

North Carolina

Clear violations:
Hertford County
Martin County
Richmond County
Rutherford County
Shelby City
Weldon City

South Carolina

Clear violations:
- Aiken County
- Berkeley County
- Edgefield County
- Fairfield County
- Florence County #1
- Laurens County #55
- Marion County #3
- Marlboro County
- Pickens County

Questionable Violations:
- Charleston County
- Lee County

Tennessee

Clear violations:
- Humboldt City

Texas

Clear violations:
- Crosby
- Waskom
- West Orange-Cove

Virginia

Clear violations:
- Nansemond County
- Suffolk City
- Westmoreland County

Appendix H

SCHOOL DISTRICTS WHERE THERE IS DISCRIMINATION AGAINST BLACK TEACHERS AND STAFF

Alabama

Clear violations:
- Baldwin County
- Barbour County
- Calhoun County
- Choctaw County
- Conecuh County
- Dale County
- Elba City
- Enterprise City
- Eufaula City
- Gadsden City
- Limestone County
- Monroe County
- Pike County
- Selma City
- Tallapoosa County
- Troy City
- Walker County

Questionable violations:
- Andalusia City
- Anniston City
- Alexander City
- Covington County
- Decatur City
- Demopolis City
- Dothan City
- Lanette City
- Montgomery County
- Opelika City
- Ozark City
- Randolph County
- St. Clair County
- Tuscaloosa City

Arkansas

Clear violations:
- Ashdown
- England
- Forest City
- Helena-W. Helena

Arkansas—Continued

Clear violations—Continued
- Hope
- McGehee
- McNeil
- Stuttgart
- Texarkana

Questionable violations:
- Arkansas City
- Bright Star
- Camden
- Dermott
- Desha-Drew
- Emmet
- Holly Grove
- Hot Springs
- Newport
- Parksdale
- Parkin Special
- Plum Bayou
- Portland
- Saratoga
- Stephens

Florida

Clear violations:
- Baker County
- Columbia County
- Excambia County
- Flagler County
- Gadsden County
- Jackson County
- Jefferson County
- Lake County
- St. Johns County
- Wakulla County

Questionable violations:
- Bradford County
- Hernando County
- Taylor County
- Sumter County

Georgia

Clear violations:
Coweta County
Dodge County
Early County
Elbert County
Fitzgerald City
Johnson County
Lowndes County
Miller County
Mitchell County
Monroe County
Putnam County
Quitman County
Randolph County
Sumter County
Troup County
Turner County
Washington County
Waycross City
Wilkes County

Questionable violations:
Appling County
Baker County
Butts County
Calhoun County
Camden County
Candler County
Charlton County
Clinch County
Colquitt County
Cook County
Crawford County
Crisp County
Echols County
Grady County
Greene County
Griffin-Spaulding County
Hart County
Jeff Davis County
Jefferson County
Jones County
Laurens County
Lee County
Macon County
Marietta City
McDuffie County
McIntosh County
Meriwether County
Monroe County
Newton County
Peach County
Pelham City
Screven County
Seminole County
Stephens County-Toccoa City
Telfair County
Thomas County
Thomaston City
Tift County
Toombs County
Treutlen County
Twiggs County
Warren County
Wayne County
Winder City
Worth County

North Carolina

Clear violations:
Iredell County
Martin County
Richmond County
Shelby City
Vance County

Questionable violations:
Fairmont City
Gaston County
Gates County
Hertford County
Hyde County
Robeson County
Scotland County-Lauringburg
Union County

Mississippi

Clear violations:
Jones County
Kociusko MS
Laurel MS
Smith County

Questionable violations:
Claiborne County
Newton MS
McComb MS
Noxubee County

S. Carolina

Clear violations:
Aiken County
Barnwell County #45
Charleston County
Chester County
Dillon County #2
Florence County #5
Greenville County
Greenwood County #52
Horry County
Kershaw County
Laurens County #55
Marion County #4
McCormick County
Newberry County
Pickens County
Saluda County
Union County
York County #2
York County #3

Questionable violations:
Abbeville County
Anderson County #1
Anderson County #2
Berkeley County
Dillon County #1
Edgefield County
Florence County #1
Lee County
Marlboro County
Oconee County
Orangeburg County #3
Orangeburg County #4
Orangeburg County #5
Orangeburg County #6
Orangeburg County #8
Richland County #2
York County #1

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Tennessee

Clear violations:
Brownsville-Haywood
Humboldt City
Lauderdale County
Questionable violations:
Chester County
Gibson County
Hardeman County
Lake County
Maury City

Texas

Clear violations:
Carthage
Center
Crockett
Cypress-Fairbanks
Gilmer
Jefferson
Marshall
Shelbyville

Texas—Continued

Clear violations—Continued
Tyler
Waskom
West Orange-Cove
Questionable violations:
Chapel Hill
Crosby
Kilgore
LaMarque
Lufkin
San Augustine
Texarkana

Virginia

Clear violations:
Suffolk City
Questionable violations:
Nansemond County
Prince George County
Southampton County
Westmoreland County

Appendix I

Districts with public aid to segregation academies

Alabama

Clear violations:
Monroe County
Russell County
Tallapoosa County

Arkansas

Questionable violations:
Crawfordsville

Florida

Clear violations:
Gadsden County
Jackson County
Questionable violations:
Jefferson County

Georgia

Clear violations:
Americus City
Questionable violations:
Baker County
Crisp County
Decatur County
Dooly County
Early County
Greene County
Hancock County
Lamar County
Lee County
Mitchell County
Randolph County
Screven County
Sumter County

Georgia—Continued

Questionable violations—Continued
Thomas County
Thomasville City
Tift County
Wilkes County
Wilkinson County

Mississippi

Clear violations:
Clairborne County
Hinds County
Jefferson County
Scott County
Smith County

South Carolina

Questionable violations:
Coosa County
Demopolis City
Dillon County #1
Dillon County #2
Dillon County #3
Edgefield County
Fairfield County
Greenwood County #50
Greenwood County #52
Lee County
Marlboro County
McCormick County
Orangeburg County #3
Orangeburg County #5
Troy City

Tennessee

Clear violations:
Covington City
Lauderdale County
Questionable violations:
Hardeman County
Robertson County

Texas

Questionable violations:
Marshall
Jefferson

DHEW REPORT TO SUBCOMMITTEE ON EDUCATION, COMMITTEE ON LABOR AND PUBLIC WELFARE, U.S. SENATE, ON THE EMERGENCY SCHOOL ASSISTANCE PROGRAM

February 1971

Introduction and Summary

In December 1970, Senator Claiborne Pell, Chairman of the Education Subcommittee of the Senate Committee on Labor and Public Welfare, requested DHEW to furnish the Subcommittee with a report on the administration of the Emergency School Assistance Program (ESAP), including an analysis of a report issued on November 24, 1970, by six civil rights organizations, under the aegis of the Washington Research Project (WRP), entitled "Emergency School Assistance Program: An Evaluation." [1]

As a matter of policy, DHEW is committed to a continuing review of all projects funded under ESAP, with particular attention to problems of compliance or program administration. This summary and the attached documents constitute the Department's report to the Subcommittee.

The DHEW report is divided into two principal parts. The first part describes the program or project funding function conducted by the Office of Education (OE), which was responsible for over-all administration of ESAP. This part sets forth procedures followed by OE personnel in processing grant applications, describes OE's past-grant evaluation procedures, and summarizes OE findings in those districts criticized in Chapter II of the WPR Report from a program and project standpoint.

The second part of the DHEW report describes the eligibility and compliance clearance procedures of the Office for Civil Rights (OCR). At the request of the Commissioner of Education, OCR, aided by the Office of General Counsel, examined the qualifications of applicant districts from the standpoint of (1) eligibility (e.g. was a district implementing the terminal phase of a desegregation plan) and (2) the likelihood of the district's compliance after funding with certain civil rights-related assurances. This part explains the pre-grant and post-grant actions taken by OCR and summarizes enforcement activity in those districts alleged in the WRP Report to have had civil rights-related violations at the time the WRP monitors visited them. A legal explanation of each of the relevant "assurances" which an applicant district was required to sign also is provided since it appears that in some cases allegations of non-compliance in the WRP Report may be based upon a faulty or different legal construction.

Background

The appropriation for the Emergency School Assistance Program was enacted on August 18, 1970, and the program became operative on August 29, only a matter of days before the opening of school across the Nation. The fundamental purpose of ESAP, of course, was to assist eligible school districts to implement their desegregation plans promptly, completely and without disruption. Funds were quickly allocated to states, and 1319 school districts were identified by the Department as potentially eligible for participation in the program. The Office of Education began immediate reviews of applicants' proposed projects in order to meet the needs of school districts in as timely a manner as possible.

While the program was designed to permit the swift dispatch of assistance, it was also designed to serve only those districts which appeared likely at the time of their applications to carry out their desegregation plans fully and fairly in all regards. The appropriations bill and Department regulations governing the program required applicant districts to promise in their applications that they

[1] The six civil rights organizations were: American Friends Service Committee, Delta Ministry of the National Council of Churches, Lawyers' Committee for Civil Rights Under Law, Lawyers Constitutional Defense Committee, NAACP Legal Defense and Educational Fund, Inc., and Washington Research Project.

would, as a condition to the receipt of funds, take steps to eliminate the vestiges of discrimination in the conduct of all their school operations.[2]

Prior to decisions on grant applications, Office for Civil Rights and Office of General Counsel personnel undertook to review each district's current record and, where time and resources allowed,[3] the actual conditions prevailing in the district in order to attempt to assess its current compliance status and the likelihood of its subsequent compliance with the assurances it had made. Plans were also made to conduct post-grant reviews of funded districts in order to evaluate their compliance with the assurances.

A brief summary of the figures indicates the statistical results of the project and compliance features of the program to date. Of the 1319 school districts originally identified as potentially eligible to participate in ESAP, as of the end of January 1971, 882 districts had been funded in the amount of $60.7 million. Approximately 321 districts chose not to apply for ESAP funds after being advised by Department officials of program requirements, including civil rights-related assurances, at state technical assistance conferences held in late summer and early fall, 1970. In addition, applications from 51 districts were rejected either for inadequate project design or eligibility or civil rights-related problems. The remaining 60 some districts were either informally advised of ineligibility or are in a so-called "hold" category pending a resolution of project or compliance problems.

Of the 882 districts funded through the end of January, OE personnel have conducted post-grant, on-site reviews of 187 districts to check program and project progress. OCR officials have conducted post-grant, on-site reviews of 147 funded districts to check compliance with the civil rights-related assurances.

The OE and OCR on-site reviews are supplemented with information contained in evaluation forms submitted by each of the funded districts. As of the end of January, 670 districts had returned their evaluation forms as required. Districts which have failed to honor this assurance requirement by returning the completed forms, are being notified of grant termination proceedings. The first of such notifications were sent in early February to 11 districts, and the first termination hearings are scheduled for February 17, 1971. Others will follow as the facts indicating non-compliance are identified and documented, and the Office of General Counsel is able to prepare for hearings.

The information contained in the evaluation forms pertaining to the formation of bi-racial and student advisory committees and to student and faculty assignments are being computerized. The computer printout will identify potential problem areas so that swift follow-up action can be made, particularly in those districts where post-grant, on-site reviews cannot be conducted because of time and resource limitations.

THE WRP REPORT AND SUMMARY OF DHEW INVESTIGATIONS

The WRP Report focused on the Emergency School Assistance Program in the two major areas discussed above: (1) the nature of certain programs and projects funded, and (2) the civil rights-related compliance status of certain districts funded.

Program and Project Criticisms

With regard to project funding, the allegations made in Chapter II of the WRP Report were based on a reading of 368 ESAP applications, which were provided to the Washington Research Project upon request by the Office of Education. Of the 368 projects read, the WRP Report specifically identified only 35 districts as having alleged program or project problems.

Of the 368 applications reviewed by the civil rights groups, OE personnel have conducted post-grant, on-site reviews to check program and project progress in 109. Of these 109 districts visited by OE, programs and projects were considered to be progressing satisfactorily in 89. In the remaining 20 districts, problems were identified and technical assistance provided in order to accomplish the necessary corrections.

In particular reference to the 35 districts specifically mentioned in the WRP Report, the final OE appraisal of the project proposals submitted

[2] It should be noted that one of these civil rights assurances did not promise future action only, but also required the district to assure the Government that it had not in the past engaged in unlawful transfers of public school property to private, discriminatory schools. A more detailed discussion of this and the assurances of post-grant compliance is contained in the attached report.

[3] The Office for Civil Rights had 32 professional reviewers available to conduct pre-grant reviews, including on-site investigations, of the approximately 1,000 districts which applied for funds.

by the 35 districts indicated that, while in some cases the funding requests were inartfully or unfortunately worded, the actual projects funded represented valid emergency needs of the local school districts. OE has conducted post-grant, on-site reviews of 26 of these 35 districts. In 6 of the 26 districts visited operational problems were identified and corrective action required. In the remaining 20 districts, programs and projects were considered to be progressing satisfactorily.

Eligibility and Civil Rights-Related Compliance Criticisms

Criticisms of the civil rights compliance status of certain funded districts are contained in Chapter III and Appendices C–I of the WRP Report. The WRP Report criticisms in this area are based primarily upon interviews with various people during an on-site monitoring program conducted by the six civil rights groups between September 18 and 27, 1970. (See WRP Report pages 70–71)

Districts—On pages 21 and 22, the WRP Report identifies three funded districts as presumably ineligible because of an alleged failure to have the necessary terminal phase desegregation plans. DHEW had previously confirmed the ineligibility of two of these districts and has voided their grants and demanded the repayment of funds allotted to date. After a re-investigation of the facts, the third district's eligibility was reconfirmed.

In Appendices C–I, the WRP Report alleges that it found civil rights-related problems in 266 districts. Of these:

132 districts have been visited on-site by OCR personnel (48 of these districts have received OCR post-grant, on-site ESAP reviews since November 1970; the remaining 84 districts received routine, on-site Title VI voluntary desegregation plan reviews during September and October 1970. These 84 districts will be reviewed or evaluated again for ESAP purposes.)

In another 53 districts mentioned in the WRP Report but not visited by OCR, the Department of Justice has conducted investigations or undertaken enforcement actions.

The remaining 81 districts are scheduled for review or record evaluations.

Alleged Violations—The WRP Report claims that there were 247 different forms of "clear" or "questionable" violations identified during its September reviews in the 132 districts visited (in most cases later) by OCR compliance officers. The Report explains what is meant by the designations "clear" and "questionable" in defining allegations of ESAP violations. (See WRP Report pp. 69–71). While many of the procedures used by the WRP monitors are probably similar to those used by civil rights specialists in OCR, in some respects there may have been significant differences in methodology, access to information, definitions of law, and burdens of proof. [4]

The Office for Civil Rights, as a Government agency, cannot legitimately conclude that a specific allegation actually constitutes a "clear" violation until it has conducted an evaluation and confirmed findings legally sufficient to warrant formal enforcement proceedings. Therefore, a number of "clear" violations according to the WRP Report may not constitute "clear" violations on the basis of ascertainable facts.

Despite the possible distinctions in approach between the WRP group and Government agencies, the Department has attempted to make a detailed district-by-district comparison of WRP and Departmental findings in participating districts. As this comparison indicates, in some cases violations as defined in the WRP Report have been confirmed as such by OCR on-site reviews. In some cases alleged violations have not been confirmed, either because the violation was remedied between the time of the September reviews of the civil rights groups and the time of OCR's on-site reviews, or because the basis for the WRP allegations simply could not be substantiated upon a more careful review, or because the legal standards the Government must follow in defining "clear" violations are different from those which may have been used by the WRP group. By the

[4] It is not clear from the WRP Report, for instance, to what extent the report's allegations of "clear violations" are based on the first-hand observations of the monitors, or to what extent they are based on second-hand information. On page 71 of the WRP Report, the group states that it defines as "clear violations" those facts which were *not* necessarily observed first-hand by the groups own monitors, but were "facts related to our monitors based on first-hand knowledge of the relator." At page 70, however, the report also states that "monitors were instructed to seek an appointment with the school superintendent or his represent-

same token, (as the WRP Report notes), violations may have also occurred in a district after both the civil rights group monitors and OCR personnel had reviewed it.

Finally, in some cases of alleged "clear" or "questionable" violations, OCR reviews substantiated the *possibility* of a violation, thereby raising a question as to the practice involved, without permitting the conclusion that a violation had in fact occurred. In such cases, the information must be reviewed carefully by OCR and Department attorneys in order to determine whether further investigation is warranted; whether corrective action can be negotiated on the basis of the information existing; or whether limited compliance resources should be turned to districts having apparently more substantial violations.

With these qualifications in mind, the Department's district-by-district comparison indicates that of the 247 "clear" or "questionable" violations alleged to have been found by the civil rights group monitors in the 132 districts visited on-site by OCR:

In 96 cases, no evidence was found by OCR investigators to substantiate the alleged violations.

In 42 cases, alleged violations were substantiated and corrective action is currently being required.

In 89 cases, OCR reviews have identified possible violations which are under evaluation and may be subject to DHEW or Justice Department action.

In 20 cases, alleged violations have not yet been investigated and are subject to review or evaluation.

Despite the possible differences between the WRP Report's approach and that used by the Government agencies, the Report has served as a valuable enforcement tool, both generally to confirm findings made by Government enforcement officers, and in many cases to draw enforcement attention (as complaints normally do) to specific allegations in specific districts.

Office of Education, Division of Equal Educational Opportunities

ADMINISTRATION

In late August 1970, shortly before the beginning of the 1970–71 term, Congress made available $75 million under the Emergency School Assistance Program to help school systems defray additional costs related to the implementation of desegregation plans.

The Division of Equal Educational Opportunities which is charged with implementing Civil Rights educational activities, was given the task of administering the new program. In order to facilitate the receipt of applications and the granting of projects to meet emergency situations created by the emergency desegregation process, a series of technical assistance conferences was established in 17 states. These conferences were hosted by the State departments of education for the purpose of assisting each eligible school district in preparing applications for projects to be submitted under the program. Consultants were available in each conference from universities, state departments of education, and the Office of Education.

Projects received in each regional office from applicant districts where there were no project or compliance questions were normally handled from log-in to funding within a 36-hour period. If special problems occurred because of compliance questions, the projects were held until the attorneys from the Civil Rights Division of the Office of General Counsel could make appropriate decisions. Upon certification or eligibility, each project was reviewed by a panel of educators in each regional office. The following criteria were used to determine funding of each project.

1. The application must meet all requirements, and written assurances to this effect must be a part of the application.

2. The applicant's relative need for assistance. In determining the need, the following things were considered:

a. The date of the implementation of the terminal phase of the desegregation plan.

b. The percentage of minority students in the total enrollment.

c. The number of students that must be reassigned to different schools under the desegregation plan.

3. The relative promise of the project in carrying out the purpose of the program, i.e., does the project meet an emergency need created by the desegregation process.

4. The extent to which the project determines comprehensively and effectively the problems identified by the local school systems in achieving and maintaining a desegregated school system.

5. The amount available for assistance under the program in relation to the applications pending.

The review panel, in making decisions, used the above criteria for each proposal plus serious consideration of any comments submitted by the Governor's office, state department of education and the Cabinet Committee on Education's State Advisory Committees appointed in seven of the eligible states.

Less than two months after the first Emergency School Assistance Program grants were made, Title IV program officers in regional offices began programmatic monitoring and assessment through technical assistance on-site reviews of projects funded under the new authority. As of January 29, 1971, 187 of the total 882 Emergency School Assistance Program projects funded have been assessed through on-site reviews by Title IV regional office staff.

The specific objectives of the Title IV program assessment are listed below:

1. Assist the grantee in adhering to Federal statutory requirements and administrative provisions of the approved project.
2. Review identified project objectives and determine the degree of their attainment.
3. Evaluate the organizational structure, procedures and resources utilized to attain these objectives.
4. Identify strengths and weaknesses in managing the program and suggest ways of achieving better results.
5. Identify promising practices, significant research, and valuable publications and provide for their dissemination.
6. Assess the selection, training, assignment, supervision and evaluation of staff personnel.
7. Evaluate the financial management of the project.
8. Assist the project director to attain overall effective program management.

Report on Districts Listed in WRP Report With Alleged Program Deficiencies

Chapter II of the Report deals solely with the administration of the Emergency School Assistance Program under a series of categories containing alleged violations either of the intent of the program or of specific administrative requirements. A total of 37 districts are listed in Chapter II as grantees which exemplify the problem or violation under discussion. Since two of the 37 represent grants declared void because of district ineligibility only 35 remain for discussion in the following analysis. It is significant to note that 26 of these 35 have already received the first on-site review, and that in only six instances does the program review report set out unsatisfactory comment on the way in which the district concerned has gone about development of the project. Corrective action has been instituted in all six cases.

For ease of reference, the 35 district analysis which follows has been organized in categories and sub-categories identical to those in the WRP Report.

Emergency School Assistance Program

Chapter II of the Washington Research Project report charges that ESAP grants have supported projects that are racist in nature; lead to resegregation; are general aid to education; do not include sufficient community and student programs and are not comprehensive. The report cites a number of projects as cases in point. Each of these general criticisms will be discussed under the same headings as those in Chapter II of the WRP report.

The misinterpretation placed on these projects was caused by the earlier request and delivery of copies of ESAP proposals that had corrected budgets but not corrected project descriptors. Therefore, an examination of the descriptors in the projects are not representative of the actual program activities that were finally negotiated by program evaluators.

A. GRANTS TO INELIGIBLE DISTRICTS

1. Grants to Districts Without Approved Desegregation Plan

(See Page 10 of OCR summary for discussion of this point.)

2. Grants to Districts Out of Compliance With the Advisory Committee Requirement

Applications that did not contain evidence of properly formed bi-racial committees were corrected by telephone calls and letters. It was difficult for many small school districts to identify five to fifteen organizations that were representative of the entire community. The more removed from urban areas the more difficult the task became. All improperly formed committees have or are being correcetd.

Newport, Arkansas.—In response to a telephone call prior to funding the superintendent documentcd at least five community organizations that are represented on the Advisory Committee. The list of the Advisory Committee reveals that there is a balanee between White and Negro representation.

Prescott, Arkansas.—A visit on February 10, 1971, to the district provided documentation of the selection of the Advisory Committee according to the regulations. At least five community organizations did select members for this Advisory Committee, which is composed of twelve people—six White, six Negro.

St. Clair, Alabama.—The original application to the Office of Education included a listing of the Biracial Advisory Committee composed of six white and nine black members. Under instruction from the Atlanta Regional office and prior to grant approval this was corrected by the Superintendent to include nine white and nine black members. This school system has also furnished the Office of Education information showing biracial student advisory committees from the secondary schools included in the proposal.

Camden City, Georgia.—The original application included a Biracial Advisory Committee of four white and three black members. The Regional office instructed the superintendent to correct this error prior to funding. Six organizations are shown in the application, from which members of the Biracial Committee were chosen. A student Advisory Committee for the only affected secondary school has been furnished the Office of Education.

Butts County, Georgia.—The Butts County application ineluded the names of four white and four Negro committee members, showing their biographical backgrounds and the organizations from which chosen. The application stated "the Advisory Committee was selected by the school administration with the intent to attain a cross-section of the community on economic, racial, and educational lines with an effort being made to insure that the representative cross-section committee members reflect and manifest the feelings of all involved and affected by this project."

Russell County, Alabama.—The original application included the names of five Negro and five white members. Because of the emergency aspect of the application, citizens who had shown keen interest in the county education program were nominated, with the understanding that changes would be made upon implementation of the program.

A visit has been made to the school system by the regional office, and it has been determined that this is a very functional committee which is serving an effective role in advising the school system. The Advisory Committee Chairman was consulted by the program officer on this visit.

Cleveland, Tennessee.—This application included five organizations from whieh the Advisory Committee would be chosen. Since approval of the application, the names of three Negro and three white members have been submitted. The organizations listed were: People for Progress, Title I ESEA Advisory Committee, Cleveland-Bradley County Human Relations Committee, Bradley County School Health Committee, and Community Social Services Club.

A Negro counselor was employed who eould relate to all students. A review conducted by a program officer from the Office of Education shows that this aspect of the program is effective and beneficial. The Biracial Committee is actively functioning and is highly supportive of this program. The white and Negro counselors work closely together and are concerned with both majority and minority pupils. This program has much promise and potential, plans are underway to improve and expand these services.

B. ESAP FUNDING OF ALLEGEDLY RACIST PROJECTS

It is not true that projeets were granted that are racist in nature. Program evaluators provided technical assistance to local edueation ageneies in redesigning activities and projeet deseriptors so that the newly designed aetivities meet identified needs, but deleted any language that would be offensive to an ethnic group.

1. Character and Hygiene of Black Students

Andalusia, Alabama.—The review has been conducted by the Office of Education program officers in a visit to the district. The project has apparent problems in accomplishing the defined objectives. Further, follow-up by program officers from the Atlanta Regional Office will be made to provide technical assistance so that the program will be successfully completed.

Lake County, Tennessee.—This project was written to serve all students. In a visit to this school system on December 10, 1970, program officers from the Office of Education report that better communication and understanding among all pupils has resulted. The superintendent of schools has indicated that the existence of any racial bias connotations will be eliminated from this proposal if they do exist. It appears that some inappropriate language was used in writing the original project and program officers indicate that the superintendent of schools has recognized this as a result of their visit and will take corrective steps.

Lee County, Georgia.—The only part of the Lee County proposal which might have been cited for racial bias is the provision for expansion and improvement of physical education facilities. This section of the narrative reads as follows: "Problem—The court order required the enrollment at Lee High School to double. In order to carry out a comprehensive program in physical education, it is necessary to renovate, remodel, and enlarge dressing rooms and shower facilities in the existing gym."

In the judgment of the superintendent and the program officers in the Office of Education such provisions as those noted above have long been sound educational practice, and are required in most schools. It, therefore, appears that the school system is attempting to improve the physical educational program, for all pupils in the school system, regardless of race.

Madison County, Mississippi.—The criticism about the employment of a janitress in this school system is unjustified. This provision was included in the program so that a school which had become overcrowded as a result of desegregation would have full-time maid and custodial services for the girls lavatories and the girls physical education dressing rooms. Reports from the school superintendent show that a great improvement has resulted in the morale of female students and in the conditions of these areas in the school.

Caswell County, North Carolina.—The program, as funded, includes a liaison person to work with community groups to facilitate committee understanding and acceptance of the unitary program and to develop rapport among all sectors of the community. The project also includes a curriculum revision program to provide appropriate instructional materials to meet special needs of pupils, and special student-to-student programs to help majority and minority pupils toward better understanding and acceptance of each other. Mobile units have been relocated to ease overcrowding in buildings, resulting from reassignment of pupils. A review by an Office of Education program officer shows that much progress is being made by the school district in developing the unitary program and in attaining the program objectives. An approved amendment, without additional funds for this program, includes teacher preparation for those teachers in working with all types of pupils in a unitary program.

2. Resegregation

It is not true that projects were funded that would resegregate students within the desegregated schools. Field assessments by Title IV program officers provide technical assistance to redirect projects that are not accomplishing specific program objectives. If the assurances signed by the applicant district are being violated, corrective action is immediately taken.

Douglas County, Georgia.—This project provides for curriculum changes so that pupils become better acquainted with the world of work. Actual work experience has been provided where possible, in order that these students might be motivated to continue in school and graduate. The dropout rate in this county is quite high. Emphasis is placed on motivating both white and Negro pupils to remain in school. The proposal does not exclude white pupils from these experiences, as has been implied by the WRP report.

Wichita Falls, Texas.—OE program officers made a visit to Wichita Falls on January 25. Their report shows that during the first 3 or 4 weeks of school, due to a lack of school buses, the arrangement described in the report was necessary. Teacher aides are employed to ride the buses with the children and assist the the teachers during the day. The children are transported to five elementary schools. There were no segregated classes and during the first few weeks these five schools altered their academic programs so as to benefit the late arriving

children. This temporary situation has been eliminated through addition of new buses and children are no longer detained in the former black school.

3. Other Allegedly Racist Projects

Greenville, Mississippi.—This application was funded for $190,000 and includes pupil personnel services, curriculum revision, teacher preparation programs, and support of education personnel to work with facilities, students and community groups to insure understanding and acceptance of the unitary program and to assist school administrators in alleviating school personnel problems. Reports from school officials indicate a minimum of student problems and point to the fact that the total program is effective.

Humboldt, Tennessee.—The Associate Principal employed at the senior high school in Humboldt received an increase of $2,000 above his former salary as principal of the small Stegall School. A visit and review was conducted by Office of Education program officers on December 8, 1970. Their report shows broader and more responsible duties for this Associate Principal than he previously held.

He functions well in his work with both races in the school and community. Statements from faculty members, pupils, and advisory committee members of both races attest to his excellent work and contribution to this unitary program. The Associate Principal states that he has general supervision over all students in the school and that members of both races seek his assistance in solving both individual and group problems.

C. GENERAL AID TO EDUCATION

It is not true that projects were funded that are in the nature of general aid to education. Desegregation or recently desegregated school districts face a multiplicity of problems incident to the desegregation process. ESAP was designed to support activities which meet those needs, as identified by the school district.

Many desegregating school districts require curriculum modification to effectively relate to a newly desegregated student body.

Such curriculum modification must be supported by teacher preparation and training programs, the addition of para-professionals and new materials and equipment. More often than not, additional materials, supplies and innovative support systems are required to overcome disparities created by the dual school system.

1. Teacher Aides and Training

Charlotte County, Virginia.—Curriculum modification developed for the newly desegregated student body dictated the need for special resources that would be available to students at any time during and after school. The grant made this possible.

Nassau, Florida.—This application was funded for $25,000 to cover pupil personnel services, teacher preparation, and aides for librarians, who will be able to function more effectively in providing professional services.

Its emphasis is on giving teachers more opportunity and competency in working with pupils on an individual basis and in meeting their special needs in a new unitary program. A program review was conducted by an Office of Education program officer on January 14, 1971, and his report shows no evidence of discriminatory practices in any part of the total school program.

The program is progressing and statements of school personnel indicate that teachers are able to give more time and professional attention to pupils' needs and problems. School officials did state that additional funds will be needed for further improvement and expansion of the program.

Greenville, North Carolina.—This application was funded for $64,200 to include pupil personnel services, curriculum revision, and teacher preparation. Of this amount, $41,700 is included in the project for teacher preparation. The project states that 12 teacher aides will be employed to increase teacher time for the following purposes: planning, inservice training, and individualized instruction for pupils. Teacher aides were needed to meet problems in 1970–71, since in the terminal desegregated program classes had become considerably larger in size because of financial problems and a consequent reduction in the number of teachers. A review was made by an Office of Education program officer on December 9, 1970, and his report shows that the program of inservice education for teachers is improving their ability to work with pupils of both races. Good leadership was shown in planning and executing the program. The program is "people involved" and it shows promise as a sound educational approach to the development of a unitary school concept.

Closed circuit television service had previously been provided to a few selected schools and under this project will be available to all students within the school system.

Thus, closed circuit television provides for community programs, curriculum revision, inservice training of staff, and equalization of pupil personnel service, all of which assist in the implementation of the desegregation plan and meet the purposes for which ESAP was established.

It was realized at the time of approval that to fully staff a studio, secure equipment, and implement the project in final form would take several months. However, unless the work commenced immediately, the school system could not assure the public that a quality educational program would be maintained during the Spring of the 1970–71 school year. In view of the fact that the community felt strongly that this was the only way to maintain the school system, the project was included in the ESAP program.

Technical assistance from the Atlanta Regional Office and the State Department of Education is now being provided the school system in implementing the final phase of the project. The program should be fully operative no later than April of this year.

Flagler, Florida.—The increased enrollment at Bunnell High School resulted from the desegregation plan and a fire which destroyed Carver Junior High School. This increase overloaded the capacity of the high school building. In the physical education facilities, school officials deemed this the most critical problem, from disciplinary, and health standpoints.

An Office of Education program visited this school district January 13, 1971, and reported that the renovation program had been delayed because of the high cost of bids received for the work. The school system is attempting to secure new bids. The initial payment of $8,000 to this system has not been obligated to date, and the Financial Management Office in HEW, Atlanta, has been requested to discontinue further payments to this school system until the district secures more reasonable bids for the project.

Berrien County, Georgia.—Through conferences with the school superintendent on December 9, 1970, the school superintendent assured the Office of Education program officer that ESAP funds would not be used to purchase fans, but that the fans would be purchased with funds from other sources.

3. Curriculum Revision

Jackson, Mississippi.—Schools had opened in Jackson on August 24, utilizing a desegregation plan that had been remanded from the 5th Circuit Court of Appeals. Four (4) different desegregation plans had been before the school district in the previous 13 weeks.

The Superintendent had resigned during the week of August 24.

The biracial committee, appointed by the District court, could not reach agreement on any issue.

An estimated 8,000 children had not enrolled in the public schools.

The untimely death of several college students on Jackson State College campus earlier in the summer had left the city in a highly tense condition.

Technical assistance in proposal development had been provided to the Jackson school district officials on August 24–26. Staff members from the State Education Agency and Mississippi State University also provided consultative assistance in preparing the proposal. They determined that provision of individualized instruction through closed circuit television would ensure the maintenance of quality education that could be readily explained to the community at large in order that community support could be regained by the school district. It would clearly meet the needs of a newly desegregated student body.

In view of the gravity of the situation in Jackson, during the week of August 24, a grant for $1.3 million was approved on August 27 by the Acting Commissioner of Education upon verbal recommendation of the project evaluation team in Jackson.

The Jackson Board of Education was advised that because of the Mississippi textbook law and the allegations that the Jackson schools were assisting segregated private schools, fund expenditure would be withheld until this issue was resolved.

After investigation, the acting superintendent was notified on October 10, 1970, that fund obligation could proceed.

Office of Education program officers conducted an on-site visit of the project on November 19–20, 1970, and reported that satisfactory progress was being made.

Pinellas County, Florida.—This application was approved for $125,439 for curriculum revision primarily in the reading program. The reading program was

considered the first priority problem in this highly urbanized area and it had been intensified as a result of desegregation. District officials stated that problems of reading affect pupils in virtually all other instructional areas. An Office of Education program officer visited this school system on December 10, 1970, and found the project underway to train teachers in the use of the new materials provided under this program.

D. THE ALLEGED MINOR ROLE OF COMMUNITY AND STUDENT PROGRAMS

It is not true that ESAP project approval was used to relegate community and student programs to a minor role. The eligible desegregating school districts varied in size from Maury, Tennessee, with less than 400 students to Miami, Florida, with more than 230,000 students. School districts were implementing various kinds of desegregation plans, creating problems that were often unique to each district. ESAP has been responsive to these individual needs as they are identified by each school district. It is true that student and community programs exist to alleviate the tension of school integration; however, these activities were not judged by some school districts to require funding while other critical areas were in desperate need of financial support.

Many school districts felt they could conduct community and school activities through existing agencies such as biracial advisory councils, PTA's, student advisory committees, and other school organizations without an initial cost requirement.

The many districts that did identify community and pupil activities as an immediate need with a definite cost requirement received grants accordingly.

E. ALLEGED FAILURE TO FUND COMPREHENSIVE PROJECTS

It is not true that comprehensive projects were not funded. The relative need for emergency assistance varied greatly from district to district. The comprehensiveness of the project is determined by the overall size of the district, the percentage of minority students, the number of students reassigned by the desegregation plan and the date of plan implementation. A small school district with a 10% student reassignment plan implemented in September 1960 cannot justify extensive program requests when compared to a school district desegregating in September 1970 with a 30% student reassignment plan.

Beggs, Oklahoma.—This district was visited by OE personnel on December 2, 1970. The Washington Research Project report refers to a request by Beggs for a series of biracial workshops for parents to discuss and attempt to resolve personal or emotional problems which may have been caused by the integration of schools. Since the state allotment for Oklahoma was only $266,837, the request for $85,000 could not be justified for Beggs, which has a total enrollment of only 760 students. The review team had to consider the total state allocation against the number of applications received from districts in the state with greater needs.

Okmulgee, Oklahoma.—This school system was visited on December 1, 1970. Okmulgee did receive a $52,755 grant to conduct teacher preparation program and other comprehensive planning activities in the community. The review team could not justify a single $250,000 grant from a total state allocation of $266,837. The reduction of the original $250,000 requested was done in cooperation with the superintendent of schools.

Demopolis, Alabama.—The following factors influenced funding: This is a relatively small system and it has had a Title IV EEO grant of $73,783 and a ESEA Title I grant of $104,954. The amount of ESAP funds for the entire State was limited, and there were large numbers of eligible districts and applications. After consideration of these factors and after conferences between school officials and Office of Education program officers the project was revised to provide for the employment of 7 teacher aides instead of the employment of a single ESAP program administrator.

Maury, Tennessee.—Maury, Tennessee, with a total of 400 students of which only 50 were minority, had a relatively small need and received a small sum of money. On the other hand, large urban systems such as Dade County, Florida having many needs submitted more comprehensive projects and received larger sums of money.

Hawkinsville, Georgia.—Amendments to the Hawkinsville application have resulted in a grant of $45,000 to meet a number of special needs. This program now covers curriculum revision, teacher preparation, and special comprehensive planning.

CONCLUSION

The purpose of the ESAP was to meet the special needs incident to the elimination of dual school systems by contributing to the cost of new or expanded activities to be carried out by local educational agencies.

The ESAP was a significantly contributing factor to the successful elimination, with a minimal disruption of the educational process, of a large number of dual school systems in existence prior to September 1970.

Office for Civil Rights

ESAP ELIGIBILITY AND COMPLIANCE CLEARANCE PROCEDURE

Pre-Grant Phase

At the request of the Commissioner of Education, each ESAP application was reviewed by Office for Civil Rights (OCR) personnel, assisted by the Office of General Counsel. This aspect of the review process focused on the technical eligibility of the district from a civil rights standpoint (e.g., was the district implementing the terminal phase of a desegregation plan?; and on its ability to comply with certain assurances. Specifically, the relevant assurances (45 CFR 181.6(a)(4) (D), (E), (F) and (G)) are:

(a) That the district has not unlawfully engaged in the gift, lease, or sale of property or services to discriminatory private schools and that it will not in the future engage in any transactions with such schools, whether or not unlawful;

(b) that the district will assign, promote, demote and otherwise treat staff members without regard to race;

(c) that the district will assign teachers so that the ratio of minority to non-minority teachers in each school is substantially the same as that ratio is in the system as a whole (the so-called *Singleton* rule); and

(d) that the district will not use practices, including testing, in the assignment of children to classes, or otherwise in carrying out curricular or extra-curricular activities, in such a manner as to result in the racial isolation of the children or discrimination against them.

This review function was not performed by the Office for Civil Rights pursuant to its responsibilities under Title VI of the Civil Rights Act of 1964. The function was performed as a service to the Office of Education, based on the following considerations: (1) the assurances noted above—while imposed not because of Title VI but solely because of their essential relevance to accomplishment of the objective of the program—overlap to some extent with commitments required under Title VI; and (2) OCR had experience in administering related requirements and had knowledge concerning the civil rights compliance posture of many of the potentially eligible districts. For example, in many cases the applicant districts were desegregating under a voluntary plan negotiated by OCR under the provisions of Title VI, and most of these districts had either been subject to OCR plan implementation reviews in the past or were reviewed concurrently with the administration of the Emergency School Assistance Program.

In conducting its pre-grant review of applicant districts, OCR examined the technical eligibility and status of desegregation, consulting as appropriate OCR files, the Department of Justice, and information provided by other official and unofficial sources.

If available information indicated that the district might not be in a position to comply with its assurances, one of several courses of action was followed: (1) in some cases, particularly those involving alleged disqualifying past transactions with discriminatory private schools, the district was contacted by telephone or letter and asked to furnish for evaluation additional information (e.g., bills of sale, etc.) or to flatly deny the allegation in writing, giving particulars; (2) in other cases, especially those involving allegations of segregated classrooms, the district, again by telephone or letter, was asked to explain the current pupil assignment system and to confirm or deny the allegation in writing; and (3) in still other cases OCR scheduled on-site reviews. However, the emergency nature of the program, the large number of applications actually to be processed (over 1,000), the limited OCR manpower available (only 32 professionals in the education divisions of the three principal regional offices involved: Atlanta, Dallas and Philadelphia), and the commitment of OCR personnel to routine on-site Title VI voluntary plan implementation reviews, did not permit on-site pre-grant ESAP reviews in the vast majority of cases.

If it appeared, subsequent to one or more of the procedures noted above, that the district was not eligible or was unable to satisfactorily assure the Office of Education that it would carry out the required commitments, the district was officially so notified in writing, and its application was rejected subject to its right to submit information needed to clear up the stated problem. If the district failed to respond or its response provided information insufficient to warrant a reversal of the earlier decision of rejection, a final, formal rejection letter was sent.

The following districts have received formal rejection letters under this procedure: in Alabama—Henry County, Huntsville, Jefferson County, Mobile, Opp City and Tuscumbia City; in Arkansas—Little Rock and Pulaski County; in Georgia—Evans County, Marion County, Muscogee County, Schley County and Upson County; in Kentucky—Hopkinsville; in Louisiana—East Carroll Parish; in Mississippi—Vicksburg; in North Carolina—Lenoir County and Montgomery County; in Oklahoma—Boynton and Grant; in South Carolina—Williamsburg County; in Tennessee—Chattanooga, Dyersburg City and Knoxville; and in Texas—Austin, Dallas, Excelsior SSD, Fort Worth, Georgetown ISD, Karnack, Madisonville ISD, Richards ISD and Wharton.

In addition, the following districts have been, or were in the process as of January 29, 1971, of being, sent initial rejection letters: Biloxi, Mississippi; Bullock County, Georgia; Clarksdale, Mississippi; Jefferson, Texas; Leon County, Florida; and Natchitoches Parish, Louisiana.

Post-Grant Phase

The major enforcement tools being used by OCR to monitor compliance with the civil rights-related provisions of the ESAP Regulation are evaluation forms prepared by OCR and mailed to each funded district, and on-site reviews conducted by OCR regional offices. These methods are supplemented by other investigation techniques such as correspondence and telephone inquiries.

Each funded district has been required to complete and return district and individual school evaluation forms (see Tab A), as provided by the regulations (45 CFR 181.6(a)(4)(I)). These forms provide information on such matters as the establishment and composition of bi-racial and student advisory committees, changes in school staffing, and student classroom assignments. As of January 29, completed forms had been returned by 670 of the 882 districts funded under ESAP. Districts which fail to honor their assurance by returning the completed forms, despite follow-up letters reminding them of this obligation, are being notified of grant termination proceedings. The first of such notifications were sent on February 2, 1971, to the following districts: in Alabama—Walker County; in Florida—Flagler County, Franklin County and Gulf County; in Georgia—Bartow County, Columbia County, Crawford County, Polk, Taliferro County, and Wilcox County; and in South Carolina—York County #1.

The Office of General Counsel has drafted guidelines with respect to termination procedures. (See Tab C)

Once received in Washington, copies of completed evaluation forms are mailed to OCR regional offices for their use and analysis in connection with scheduled on-site ESAP reviews. In addition, OCR is obtaining from the Office of Education computerized printouts listing districts and identifiying errors recorded on the evaluation forms, which will indicate possible violations. This information will be used as a basis for seeking corrective change, or where necessary to institute termination proceedings, with respect to funded districts which have not been reviewed on-site and are not scheduled to be reviewed. The information is also being used to supplement field investigative work with respect to districts scheduled for review.

In addition to the evaluation forms completed by local school officials, OCR conducts in-depth, on-site post-grant ESAP reviews, specifically to check compliance with the assurances concerning the transfer of public school property to private, discriminatory schools; discriminatory assignments, dismissals or demotions of faculty; and segregated classrooms, transportation and extracurricular activities. This type of review consists of an examination of records, observations, interviews of school personnel, and interviews of students and parents.

In cases where it is believed that possible violations—particularly of ESAP assurances relating to teacher discrimination, classroom segregation or transfers of public property to private discriminatory schools—may exist, an in-depth post-grant ESAP review may take at least from three days to one week of on-site fact gathering followed by an equal amount of time for the preparation of a

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written report at the regional level. The subsequent analysis of these written reports by OCR and Office of General Counsel officials usually requires further investigation and, in some cases, another on-site visit in order to obtain the necessary information to legally prove a violation.

Because these on-site reviews are time-consuming and OCR does not have a staff large enough to review every ESAP-funded district, priorities have been established based upon information contained in the district evaluation reports and gathered from other official and unofficial sources. Information obtained from these on-site reviews is put into report form and then analyzed by OCR officials, assisted by the Office of General Counsel.

As of January 29, 1971, OCR has conducted post-grant on-site reviews in 141 of the total 882 ESAP-funded districts.

LEGAL ANALYSIS OF ESAP ELIGIBILITY REQUIREMENTS AND ASSURANCES

In Appendices C–I (pp. 87–100) of "ESAP-An Evaluation," prepared by the six civil rights groups under the aegis of the Washington Research Project (WRP), 266 school districts are alleged to have had "clear" or "questionable" violations of ESAP regulations in the following categories:

(1) Districts Receiving ESAP Funds that are Violating their HEW or Court Ordered Desegregation Plan.
(2) Districts with Classroom Segregation.
(3) Districts with Segregation in other Facilities.
(4) Districts with Segregated Transportation.
(5) Districts with Racially Identifiable Faculties.
(6) Districts where there is Discrimination Against Black Teachers and Staff.
(7) Districts with Public Aid to Segregation Academies.

These categories relate directly to the eligibility requirement and assurance provisions of the ESAP regulations. The responsibility for checking each applicant's eligibility and assurances rests with the Office for Civil Rights and the Office of General Counsel. In making its determinations, OCR has been guided by the following legal construction of the several assurances which an applicant for ESAP funds is required to give as a condition for being certified as eligible for assistance.

Implementation of Plan or Court Order—45 CFR 181.3(a)(2) requires that to be eligible, an applicant district must be complying in all respects with its terminal, voluntary or court-order desegregation plan. In making this determination principal weight has been given to the latest information available to OCR or the Department of Justice, although in some cases, outside sources have also been consulted. In court order districts, the Justice Department's assurance that the district is complying with its court order is sufficient.

Classroom Segregation; Segregation in Other Facilities—45 CFR 181.6(a)(4)(G) requires the school district to assure that it will not permit "racial isolation" of students in curricular or extra-curricular activities, which includes classrooms, other school facilities (such as the cafeteria), and transportation.

With regard to classrooms, a district which is known to have all-black classes or a substantial imbalance is ordinarily questioned as to the reason for the situation. When evidence of educationally legitimate ability grouping based on nonracial criteria can be produced, the district is considered to be meeting this assurance. When such evidence is not provided, the district is requested to take corrective action.

With regard to other school facilities, there is no educational reason for racially identifiable pupil assignments, and where such a situation is known to exist, correction is or will be required. Similarly, it is clear that the assignment of students to buses on a racial basis, duplicate routes, or the routing of buses on a racial basis, are prohibited.

Racially Identifiable Faculties—45 CFR 181.6(a)(4)(F) requires the district to "take effective action to ensure the assignment of staff members who work directly with children at a school" so as to meet the *Singleton* ratio (i.e. that the ratio of minority to nonminority staff in each school is substantially the same as that ratio is in the system as a whole). In a district which has the *Singleton* ratio provision as part of its desegregation plan, this assurance adds nothing since, in order to meet the basic eligibility criteria, the district has to comply fully with the terms of its plan, *Singleton* included. In districts which do not have the *Singleton* ratio as part of the desegregation plan, however, the assurance requires that the district agree to meet the *Singleton* ratio, not necessarily prior to funding but at the time of the

next period for reassignment of teachers, and in no event later than reassignments for the next school year.

Teacher Discrimination—45 CFR 181.6(a)(4)(E) requires the local educational agency to hire, fire, promote and otherwise treat its teachers and staff in a nondiscriminatory manner. At the pre-grant stage, all available information on possible discrimination cases was considered and, in most instances, the district was asked to supply, in writing, a complete explanation of staff changes alleged to be discriminatory, including an indication that objective criteria were applied in the decisionmaking process. When the district's explanation appeared adequate, the assurance was considered to be given in good faith. In court-order districts where the Justice Department had investigated alleged discrimination, their evaluation of the situation was ordinarily deemed sufficient to permit an HEW pre-grant compliance determination.

In monitoring compliance of ESAP districts with this provision of the Regulation, OCR is being guided in part by the policy memorandum on nondiscriminatory treatment of staff issued on January 14, 1971. (See Tab B). In addition, to the extent OCR resources allow, individual demotion and dismissal complaints are being investigated during the on-site reviews. The assurance provided under the ESAP Regulation on this matter is no different from the school district's commitment under Title VI.

Aid to Private Discriminatory Schools—45 CFR 181.6(a)(4)(D) implementing P.L. 91-380, p. 4, requires the applicant district to assure that it has not, prior to applying for ESAP funding, engaged in any unlawful transactions with a nonpublic school which discriminates on the basis of race, and that it will not engage in any transactions with such schools in the future.

A memorandum dated October 14, 1970, from Mr. Harry Chernock, Assistant General Counsel (Education Division), to Mr. Jerry Brader, Director, Division of Equal Educational Opportunities, Office of Education, construes the assurance in the following manner:

(1) For past transactions (*before* the application is submitted), the transaction, to be disqualifying, must amount to a subsidy given to the nonpublic schools, and must occur in the context of massive and effective desegregation. A transaction with a nonpublic school for full value does not constitute a subsidy and, therefore, is not a disqualifying transaction. A sale of surplus property conducted in accordance with law by means of a public auction, with proper advertisement and bidding procedures, generally is considered to be a sale for full value. If the transaction is not for full value, an inquiry and determination must then be made as to whether the recipient nonpublic school discriminates on a racial basis.

(2) For transactions which occur *after* the application is submitted, any transfer of property or provision of services by the public school district is prohibited if the recipient private school discriminates. Thus, if property has been transferred or services provided, the question is whether the nonpublic school receiving the property or services discriminates on a racial basis. The fact that the private school paid full value for the property does not prevent the transaction from disqualifying the district from receiving ESAP funds.

(3) For both past and future transactions, the question of whether the nonpublic school discriminates on a racial basis is considered in light of all available information concerning the establishment of the school and its admission policies, including the present status of the school under current IRS tax exemption standards. As a bare minimum, the nonpublic school must have adopted a nondiscrimination policy which has been published in a newspaper of general circulation in the community.

Grants to Ineligible Districts—Not included as a category in the appendices of the WRP Report but mentioned separately in the body of the WRP Report are three districts which received grants but were allegedly ineligible for failure to implement an approved desegregation plan. Under the Regulation, to be eligible for assistance, a district must have implemented the terminal phase of an acceptable desegregation plan between the opening of school in 1968 and 1970. A description of the investigation and action taken in these three districts, as well as in others reviewed for other types of alleged noncompliance, is provided below.

Report on Districts Listed in WRP Report With Alleged Civil Rights Related Violations

ELIGIBILITY

On pp. 21-22 of the WRP Report three districts are listed as having been funded without an approved or terminal phase desegregation plan.

(1) *Northampton County, Va.*—Upon investigation OCR, with the assistance of the Office of General Counsel, had previously determined that the district had been funded by administrative error since it was not implementing a 1970 terminal phase desegregation plan. On January 8, 1971, the district was formally notified in writing that the grant was considered void and that all ESAP funds must be returned.

(2) *Stewart County, Ga.*—Upon investigation OCR and the Office of General Counsel had previously determined that the district was ineligible for funds but also had been funded by error. On January 8, 1971, the district was formally notified that the grant was considered void and that all ESAP monies must be returned.

(3) *Nashville, Tenn.*—OCR and the Office of General Counsel have reconsidered the eligibility status of the school district and it has been determined that the district, in fact, was eligible to participate in ESAP.

COMPLIANCE WITH ASSURANCES—DISTRICT-BY-DISTRICT ANALYSIS

The following is a summary analysis of individual districts by state, listed under the seven alleged violation categories in the appendices of the WRP Report. The purpose of the district-by-district analysis below is to provide a summary of specific OCR investigative efforts and findings with respect to the specific ESAP violations alleged in the WRP Report. The summary analysis covers: (1) districts which have been subject to either an OCR on-site Title VI voluntary plan implementation review or an OCR on-site ESAP review, or both, and (2) districts which as of January 29, 1971, were definitely scheduled for ESAP on-site or record reviews in the near future. The summary also takes note of Justice Department enforcement action in court-order ESAP districts covered by the WRP Report.

In Appendices C–I, the WRP Report alleges that it found civil rights-related problems in 266 districts. Of these:

132 districts have been visited on-site by OCR personnel (48 of these districts have received OCR post-grant, on-site ESAP reviews since November 1970; the remaining 84 districts received routine, on-site Title VI voluntary desegregation plan reviews during September and October 1970. These 84 districts will be reviewed or evaluated again for ESAP purposes).

In another 53 districts mentioned in the WRP Report but not visited by OCR, the Department of Justice has conducted investigations or undertaken enforcement actions.

The remaining 81 districts are scheduled for review or record evaluations.

The WRP Report alleged 247 "clear" or "questionable" violations in regard to the 132 districts visited on-site by OCR.

In 96 cases, no evidence was found by OCR investigators to substantiate the alleged violations.

In 42 cases, alleged violations were substantiated and corrective action is currently being required.

In 89 cases, OCR reviews have identified possible violations which are under evaluation and may be subject to DHEW or Justice Department action.

In 20 cases, alleged violations have not yet been investigated and are subject to review or evaluation.

As indicated earlier, the categories of violations listed in the appendices of the WRP Report overlap Title VI nondiscrimination requirements in most instances. For this reason, findings disclosed during the on-site Title VI plan implementation reviews conducted in September and October, 1970, are included in this report if they are relevant to the so-called "clear" and "questionable" ESAP violations alleged. At the same time, however, the Title VI plan implementation reviews were of necessity limited to assessing compliance with the student and faculty assignment features of the district's Title VI voluntary desegregation plan. As such, they did not cover the question, unique to ESAP, of property transfers to private schools; nor did they focus in detail upon possible faculty discrimination other than to obtain basic information (except in cases where complaints of such discrimination were known to OCR beforehand). Due to time limitations, reviewers were not always able to obtain on-site all pertinent information regarding student classroom assignment patterns and practices throughout the school system.

It should also be noted that OCR's responsibilities under Title VI and the Emergency School Assistance Program have led to reviews of districts not cited in the WRP Report. The following summary analysis does not report on these other investigation activities.

In presenting the following district-by-district analysis, the term "allegation" refers to that made in the WRP Report under their headings of "clear" or "questionable" violation.

"OCR Action" then indicates what reviews and enforcement activities have taken place in the district with regard to the facts, where known, which constitute the WRP Report Allegation. (It should be noted that the Office for Civil Rights did not have access to the reports or other information upon which the WRP based its allegations until after the WRP Report was published on November 24, 1970. OCR enforcement activities indicated below are therefore not necessarily as a result of, or in direct response to, the allegations made in the WRP Report.)

(District-by-district analysis omitted at the request of HEW.)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., January 14, 1971.

MEMORANDUM

To: Chief State School Officers and School Superintendents.
From: J. Stanley Pottinger, Director, Office for Civil Rights.
Subject: Nondiscrimination in Elementary and Secondary School Staffing Practices.

Title VI of the Civil Rights Act of 1964 requires that students in a school district receiving Federal financial assistance be afforded educational services free from discrimination on the ground of race, color or national origin. Since the *Bradley* and *Rogers* decisions of the Supreme Court in 1965 it has been clear that this provision precludes the assignment of teachers to public schools within the school system on a racially segregated basis. From more recent decisions of the courts of appeal, it has become equally clear that Title VI also precludes discrimination in the hiring, promotion, demotion, dismissal or other treatment of faculty or staff serving the students. This memorandum describes HEW policies reflecting more recent court decisions in each of these two areas.

The goal of HEW in rendering assistance to educational programs is to help school officials to achieve the highest possible quality of education for everyone. The elimination of discrimination in these programs is not only required by the law, but is consistent with this goal. Indeed, racial or ethnic discrimination in staffing actually deters the achievement of high quality educational opportunities.

School districts have for the past several years reported to HEW's Office for Civil Rights on the racial and ethnic composition of their staffs. It will now be HEW's policy to make further inquiry into staffing practices whenever it appears from this or other information either that a school district may be making its assignment of teachers or staff to particular schools on a basis that tends to segregate, or that the racial or ethnic composition of its staff throughout the system may be affected by discriminatory hiring, firing, promotion, dismissal or other employee practices.

ASSIGNMENT OF STAFF TO SCHOOLS

School districts that have in the past had a dual school system are required by current law to assign staff so that the ratio of minority group to majority group teachers in each school is substantially the same as the ratio throughout the school district. This is the so-called *Singleton* rule, enunciated by the Court of Appeals for the Fifth Circuit in January, 1970. The same rule applies to non-teaching staff who work with children.

Even though a school district has not in the past operated an official dual system of schools, its statistical reports may nonetheless indicate a pattern of assigning staff of a particular race or ethnic group to particular schools. Where this appears to be true, the Office for Civil Rights will seek more detailed information regarding assignment policies and practices. If it is determined that assignments have been discriminatory, the school district will be requested to assign teachers so as to correct the discriminatory pattern.

HIRING, PROMOTION, DEMOTION, DISMISSAL AND OTHER TREATMENT OF STAFF

The reports presently being submitted to the Office for Civil Rights by local educational agencies reflect not only the assignment by race of teachers and other staff to particular schools but also reflect the total composition by race of the staff throughout the reporting school system and the hiring of teachers by race

each year. With respect to the employment practices of each district it will be HEW's policy to make further inquiry into such matters when it appears (1) that there has been an abrupt and significant change in the racial or ethnic composition of the teaching or any other category of staff serving a particular school district, or (2) that the presence of members of racial or ethnic groups among newly employed staff members in any category differs significantly from their presence among qualified persons reasonably available for employment by the school district. HEW's Office for Civil Rights will ask school districts so identified to furnish more specific information concerning these practices in the following categories of staff:

1. Principals.
2. Assistant Superintendents and other central office professional staff.
3. Deputy, associate and assistant principals.
4. Classroom teachers.
5. Other professional staff for whom certification is generally expected, such as counsellors, librarians, and special education teachers.
6. Other staff who work with children, such as teacher-aides and bus drivers.

In each of these categories we will request information as to the identity of staff members who have been released or demoted, the reasons for release or demotion, the criteria used in selecting teachers for employment, promotion, release or demotion, and the comparative professional, educational and personal qualifications of the applicants and staff members involved.

This information will be analyzed, and, where necessary, additional investigation conducted to determine whether discrimination has been practiced. It is, of course, not possible to catalog all forms which such discrimination might take. Several of the more obvious methods of discrimination are:

1. *Hiring.*—A school district which focuses its recruitment efforts on teacher training institutions attended predominantly by members of one race while ignoring institutions attended predominantly by members of another race is discriminating in its hiring practices. Similarly, the imposition of different hiring procedures, such as the requirement of additional personal interviews for members of one race as contrasted with others, is discriminatory. Discrimination in other features of the employment process may also be found in salaries offered, working conditions promised, training provided and tests or other qualifications imposed.

2. *Promotions.*—The selection of teachers or other staff for promotion may be subject to racial discrimination just as the selection of teachers for employment. Any form of such discrimination would be a violation of law.

3. *Demotions.*—The demotion of a staff member, whether involving a cut in pay or simply a change in duty, is discriminatory if it reflects a racial decision by the school administrators. Thus, if the consolidation of two schools necessarily results in the demotion of some staff members, such as department heads, counsellors and coaches, the selection of the staff members to be demoted may not be based upon race. The courts have also held that persons demoted as an incident to the desegregation process are to be given preference in future promotions.

4. *Dismissals.*—Dismissal of a teacher for failure to meet certain standards or qualifications would, of course, be racially discriminatory if the same standards or qualifications were not applied to teachers of another race. A teacher who has been assigned to a particular school for racial reasons may not thereafter be dismissed if a reduction of force results in the closing of that school unless his qualifications for teaching are compared with all other teachers throughout the system and he has been found, under reasonable and objective criteria, to be less qualified than all teachers retained in the system.

If it is determined from the information furnished by the school district and from any other investigation that discrimination has been practiced, the school district will be requested to develop a plan for prompt corrective action. The types of corrective action required will depend upon the nature and results of the discrimination that has been practiced.

A discriminatory dismissal and its effect may be adequately corrected by reinstatement of the dismissed staff member together with the payment of any lost pay. Discriminatory hiring practices may be sufficiently corrected by adopting objective criteria and standards for future recruitment and hiring and by promptly offering positions to qualified persons who have been rejected or overlooked. In each case, however, the school district will be asked to develop and submit a specific plan for correcting the effects of the discriminatory practice and assuring against the repetition of such discrimination.

When it is clear that the effect of the discrimination cannot otherwise be corrected and the discrimination has in fact resulted in a significant distortion in the

racial or ethnic composition of the staff, the school district may be asked to develop a plan designed to achieve a racial and ethnic composition of its total staff which will correct the distortion. In determining what that composition should be, consideration will be given to the past composition of the staff in each category and to information bearing on the reasonable availability of qualified teachers and other categories of staff from racial and ethnic minorities.

I have been assured by the Office of Education that it will give priority attention to requests for consultation and assistance in the development of realistic and educationally sound plans.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., February 11, 1971.

To: Mr. Jerry H. Brader, Director, Division of Equal Educational Opportunity, BESE.
From: Education Division, Office of the General Counsel.
Subject: Remedies available in cases of LEA non-compliance with ESAP program and other requirements.

This memorandum (prepared at your request) summarizes the remedies available to the Government where it is found that a grant, or performance of a grant, to a local educational agency (LEA) under the Emergency School Assistance Program (ESAP) fails to comport with legal requirements under that program.

AVAILABLE REMEDIES IN GENERAL

In general, the following are among the remedies available to the Government in the event of violation of legal requirements incident to the making of a grant or performance thereunder:

1. Termination of the grant;
2. A suit for specific performance of a grant condition which has been breached;
3. Recovery of unlawfully expended funds through setoff, judicial action or otherwise.[1]

These remedies are discussed below in terms of several categories of non-compliance situations to which the ESAP program may give rise. Before turning to that analysis however, it should be noted that in many cases violations of the ESAP grant conditions for example, the assurance against in-school segregation (45 CFR § 181.6(a)(4)(vii)) may also involve violations of Title VI of the Civil Rights Act. Accordingly, in such cases, in addition to pursuit of the appropriate remedies under the ESAP program, enforcement action under Title VI may also be necessary. (If the LEA is engaging in conduct violative of Title VI, its continued eligibility for assistance under other Federal programs as well as ESAP would be in question.)

Moreover, some violations of the ESAP conditions may also constitute (or grow out of) non-compliance with the court order for desegregation under which the district is operating. In such a case, action by the Department of Justice to obtain compliance with the court order may be the appropriate means for curing the difficulties under ESAP. As set forth more fully below, it would appear that a request for judicial enforcement by way of a *Frazer* type suit for specific performance of ESAP grant conditions (which are not covered by the court order) might in some cases also appropriately be joined with a civil rights complaint.

APPLICABILITY OF REMEDIES TO ESAP PROGRAMS

The applicability of the remedies listed above depends in part on the type of situation presented. It may, therefore, be useful for purposes of discussion and analysis, to consider the following categories of cases: (1) where the grant is not authorized by law; (2) where a grant condition has been breached; (3) where the grantee misrepresented material facts; and (4) where the grantee spends funds for an unauthorized purpose.[2] Finally, since violations of the Mondale amendment prohibiting the payment of ESAP funds to a school district which engages in the gift, lease, or sale of property or services to a discriminatory private school involves special problems, it is treated separately.

[1] This memo does not deal with the procedures or manner in which unauthorized expenditures are uncovered (*e.g.*, audit, program review, etc.). For a general discussion of the relationship between audit exceptions and termination for nonconformity, see memo from Messrs. Meyers, Lesser, and Rourke to General Counsel Willcox (July 28, 1949) (hereinafter "1949 memo") (attached as Tab A).

[2] Categorization is always dangerous, and it is not intended to suggest that factual situations under ESAP lend themselves to neat and separate compartmentalization.

I. Grant, the Award of Which is Determined to Have Been Unauthorized Under Law

A grant is made to an LEA under ESAP. Subsequently, it is determined that the grantee was ineligible for the award of the grant under the statutory or regulatory criteria for determining "threshold" eligibility for an ESAP grant.[3] For example, the grantee may have been in a terminated status under Title VI of the Civil Rights Act, but the Office of Education inadvertently made the grant to it, or at the time of the grant, the LEA may not have had a court order or approved terminal plan for desegregation with the final phase commencing in September 1970, but OE was unaware of the true facts. The LEA may have, prior to the award of the grant, engaged in a transaction which is disqualifying under the Mondale Amendment.[4] In any event, let us assume that it becomes clear after the award of a grant that the Commissioner lacked authority to make the grant to the particular grantee and that nothing the LEA can do can change those circumstances. The following remedies are pertinent:

(a) *Annulment.* We do not think that an ESAP grant can lawfully be continued where the grant was made to a grantee which, at the time of the award, was ineligible for assistance under the governing statutes or regulations pertaining to the ESAP program. The making of such a grant by the Commissioner exceed the authority conferred upon him by law. A grant may not give rise to a valid obligation of the Government of the United States unless it is made pursuant to an agreement authorized by, law; a grant to a person which is by law ineligible to receive it violates this requirement.[5] Accordingly, a grant under the ESAP program to an ineligible grantee must be annulled as unauthorized under law. That the award was made by a grants officer to whom the authority to make grant awards had been properly delegated does not provide a basis for avoiding the annulment of an invalid grant.[6]

Although the Terms and Conditions under ESAP (35 F.R. 13445–48) contain a termination clause, this clause would appear inapplicable to the case of an unauthorized grant. The clause covers cases where "the Grantee fails to carry out its approved project proposal in accordance with applicable law and the terms of [the] grant" and speaks in terms of costs which "would have been allowable" but for the termination. In the case of a grant which never should have been made, it is not the circumstances of the performance but the basis upon which the grant was made that is in question.[7] In such a situation, no costs "would have been allowable."

Certain procedural incidents should attend the annulment of an unauthorized grant. Although the termination clause with its assurance of notice and opportunity for a hearing to the grantee may not be directly applicable to the case of the void grant, the grantee (in addition to being given notice and a statement of reasons for the annulment of the grant) should be given an opportunity to show cause why the action should not be taken (including an appearance before concerned OE officials).

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[3] In the case of ESAP, the threshold program criteria for eligibility in 45 CFR § 181.3 reflect the eligibility criteria communicated to Congress in connection with the enactment of the P.L. 91-380 appropriation.

[4] P.L. 91-380, which appropriates funds for ESAP, prohibits the use of such funds for any school district which *has unlawfully* engaged in the gift, lease, or sale of property to a private school which discriminates on the basis of race, color, or national origin.

[5] See Comp. Gen. Dec. B-164990 (Sept. 6, 1968, unpublished). There a grant, pursuant to Titles II and III of the Economic Opportunity Act of 1964, was made by the Office of Economic Opportunity to a corporation which was not in existence at the time the grant was made and the relevant obligation recorded. The Comptroller General applied § 1311 of the Supplemental Appropriation Act, 1955, now 31 U.S.C. 200, which provides that, in the case of a project grant, no amount may be recorded as an obligation of the Government unless it is supported by documentary evidence that the grant was made "pursuant to an agreement authorized by, or plans approved in accord with and authorized by law." The Comptroller General ruled that the requirement of the statute had not been met since the incapacity of one of the parties vitiated the grant agreement. Moreover, the grant had not been approved in accordance with § 242 of the Economic Opportunity Act (governor's approval) and, therefore, was not made pursuant to plans approved in accord with and authorized by law. The Office of Economic Opportunity was directed to remove the obligation recorded as a result of the grant.

[6] Compare 40 *Comp. Gen.* 679 (1961) (Government procurement contract the award of which was not authorized by the governing procurement statute (10 U.S.C. § 2305) is illegal and must be canceled, notwithstanding contracting officer's approval); 44 Comp. Gen 221 (1964). These cases reject the notion that the Government is estopped from cancelling an unauthorized contract by the action of its contracting officer in approving the contract. See *Utah Power and Light Co.* v. *United States*, 243 U.S. 389, 409 (1916); *Federal Crop Insurance* v. *Merrill*, 332, U.S. 380, 384 (1947) (contractor charged with notice of all statutory and regulatory authority limitations on contracting officer). Such estoppel would seem unavailable whether the basis for the invalidity of the contract is a failure to comply with a specific statutory provision or with regulations adopted pursuant to statute. *Prestex Inc.* v. *United States*, 320 F. 2d 367, 371 (Ct. of Cl. 1963); *Schoenbrod* v. *United States*, 187 Ct. Cl. 621, 410 F. 2d 400 (1969) (government contract for purchase of sealskins, entered into following negotiations which did not comply with procurement regulations, was invalid and its subsequent cancellation by the government was not a breach of contract).

[7] Cf. 6A Corbin on Contracts § 1444 at p. 449 (1962); *Kulukundis Shipping Co.* v. *Amtorg Trading Corp.*, 126 F. 2d 978 (2nd Cir. 1942).

(b) *Specific performance.* Nothing the grantee of an unauthorized grant can do can rectify the circumstances which makes his grant void *ab initio.* Accordingly, specific performance is not an appropriate remedy in this case.

(c) *Recovery.* If funds have been paid out under an unauthorized grant, they have been paid out without authority of law. Accordingly, it appears that the Commissioner would be obliged to attempt to recover such funds under the procedures set forth, pursuant to the Federal Claims Collection Act of 1966, 31 U.S.C. 951–53, in 4 CFR Parts 101–105 (Tab B).[8] Briefly, this would involve administrative requests for payment of claimed funds and referral to the GAO or the Department of Justice, as appropriate, if such requests proved fruitless.

II. Breach of Condition or Assurance

Let us assume that an ESAP grant is made to an LEA and, at the time it is made, it is perfectly valid. Subsequent to the making of the grant, the grantee commences a course of conduct which is in violation of one (or more) of the assurances which the grantee made as a condition to receipt of the grant (45 CFR § 181.6).

The condition may be one which the Commissioner has imposed under regulation in the exercise of his discretion to administer the program and the violation of the condition is a continuing one (*e.g.*, in-school discrimination) or the breach may involve a failure to comply with an act which the grantee was to perform as of a certain date (*e.g.*, establishment of an advisory committee, or publication of the proposal within 30 days, 45 CFR § 181.6(a)(4)(viii)).[9]

The following remedies are pertinent:

(a) *Termination.* Breach of a grant condition would be a legal basis for termination of the grant, although the materiality of the condition, the circumstances of the breach, and question of whether it was continuing would be relevant issues with respect to whether termination proceedings should be initiated or sustained.

1. Termination of an ESAP grant is authorized by paragraph (11) of the ESAP Terms and Conditions (35 F.R. 13445–48) which, as indicated above, specifies that remedy in cases where the grantee fails to carry out its approved project in accordance with law and the terms of the grant.[10] Under paragraph (11), a grant may not be terminated "unless the grantee has been given reasonable notice and an opportunity to show cause why such action should not be taken, and has been afforded reasonable notice and opportunity for a full and fair hearing." These notice and hearing provisions are required by statute.[11] Accordingly, the adjudicatory procedures of the Administrative Procedure Act appear to be applicable.[12] Generally speaking, these procedures involve a hearing presided over by the Commissioner or a hearing examiner, an opportunity to submit proposed findings, conclusions and briefs to the examiner, and a right of appeal to the Commissioner from an initial adverse decision of the examiner.[13]

2. Termination proceedings would be initiated by a notice to the grantee that the Commissioner had decided to terminate, stating the basis for that determination, and advising the grantee of his procedural rights.[14] Can assistance under

[8] Memorandum Education Division, OGC, to Dr. Grant Venn, Associate Commissioner, Bureau of Adult, Vocational and Library Programs re certain grants under Title II-A HEA (May 6, 1969) (G:OE HEA Title II file); memorandum, Harry J. Chernock, Acting Assistant General Counsel (Education Division) to Dr. Venn re certain grants under Title II-A, HEA (January 31, 1968) (same file).

[9] As indicated above, breach of an assurance based on the Mondale Amendment (as it applies to future transactions) 45 CFR § 181.6(a)(4)(iv)(b), is treated separately (See infra, p. 21).

[10] *Termination.*—a. Grants may be terminated in whole or in part by the Government in the event the Grantee fails to carry out its approved project proposal in accordance with applicable law and the terms of this grant. No grant shall be terminated unless the Grantee has been given reasonable notice and an opportunity to show cause why such action should not be taken, and has been afforded reasonable notice and opportunity for a full and fair hearing.

b. Termination shall be effected by delivery to the Grantee of a written notification thereof, signed by the Grants Officer.

Financial obligations incurred by the Grantee prior to the effective date of the termination will be allowable to the extent they would have been allowable had the grant not been terminated. The Grantee agrees to furnish the Grants Officer within sixty (60) days of the effective date of termination an itemized accounting of funds expended, obligated, and remaining under the grant. The Grantee also agrees to remit within thirty (30) days of the receipt of a written request therefor any amounts found due.

[11] Economic Opportunity Act of 1964, § 604(3).

[12] 5 U.S.C. § 554; see *Springfield Airport Authority* v. *C.A.B.*, 285 F. 2d 277 (D.C. Cir. 1960).

[13] Procedures set forth for termination of grants under Title II of the Economic Opportunity Act (45 CFR § 1009 (1970)) are inapplicable by their own terms to non-OEO Title II programs and are apparently made inapplicable to the ESAP Program by the ESAP regulations themselves (45 CFR pt. 181 (preamble)). CFR does not contain any general overall administrative procedural rules for use in cases of OE grant termination. (It would appear that, quite apart from the needs of ESAP, development and publication of such a set of procedures would be useful. Cf. 45 CFR Pt. 81; 45 CFR Pt. 106.)

[14] Prior negotiation to obtain compliance may also be appropriate. Compare the OEO regulations in 45 CFR Pt. 1009.

the grant be suspended following this notice and pending completion of the termination proceedings? [15]

The following language in paragraph (11) of the Terms and Conditions is pertinent:

> Financial obligations incurred by the Grantee prior to the effective date of the termination will be allowable to the extent they would have been allowable had the grant not been terminated.

This language advises the grantee that costs incurred prior to termination which are for valid grant purposes will be allowed up to the date of termination. In other words, the grantee is assured that its authority to incur obligations which are within the terms of the grant and which give rise to "allowable costs" will not be stopped until a termination becomes effective in accordance with the procedures set forth in the Terms and Conditions (notice and hearing). Suspension of assistance under the grant would be inconsistent with this assurance given the grantee and, therefore, does not appear to be an available remedy.[16]

(b) *Specific performance.* An alternative remedy in the face of continued noncompliance with a grant condition is a suit for specific performance of the condition on the basis of the *Frazer* doctrine.[17] Where a court suit under the Fourteenth Amendment is pending against the district, a suit for specific performance might be consolidated with the civil rights suit (we would have to coordinate with the Department of Justice on this approach). The chief advantage of specific performance is that it does not require grant termination and thus a cut-off of funds.

(c) *Recovery of funds.* The rule stated in paragraph (11) with respect to allowability of obligations incurred prior to termination for a breach of condition would foreclose any recovery of payments under the grant except in the case of unallowable costs. This provision apparently reflects the traditional formulation applied by the Department in grant cases that only funds expended for an unauthorized purpose (as distinguished from funds expended in an unauthorized manner) are subject to an "audit exception" and may be recovered.[18]

III. Misrepresentation

There may be cases where the grantee has made material misrepresentations in order to secure an ESAP grant. If, based on the true facts, it develops that the grant was unauthorized because the statutory eligibility requirements are not met, then the procedures stated under item I above would apply. However, let us assume that the misrepresentations go to an assurance which is not a prerequisite of eligibility. In this case, the grant would seem voidable [19] rather than void.[20]

IV. Use of Funds for an Unauthorized Purpose

Let us assume that a valid grant is made, and the grantee complies to the letter with all the assurances set forth in 45 CFR § 181.6. However, the grantee spends funds on objects which are not those described in its project application and which are not authorized under the program regulations. (For example, let us assume that

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[15] Cf. 45 CFR § 1009.4. (The question is a practical one. If grant obligations may continue to be incurred during the pendency of termination proceedings, and, if these proceedings are lengthy, the grant funds may all be committed before the termination becomes effective).

[16] As more fully set forth below, in certain cases where breach of condition so pervades the project that it can be said that the carrying out of the project is not in accordance with the purpose of the program, it may be open to the Commissioner to determine that overpayments have been made and to make necessary adjustments in the rate of quarterly payments to reflect such overpayments.

[17] In *United States* v. *Frazer*, 297 F. Supp. 319 (M.D. Ala. 1968), the United States, acting through the Attorney General, brought suit for specific performance to enforce Federal requirements that the States follow merit personnel standards as a condition of their receiving Federal grants under a variety of grant programs. Against a challenge to the right of the United States to maintain the action, the court held that the United States does have authority to enforce, by a judicial proceeding, the terms and conditions of grants of Federal property. The remedy of termination, in the court's view, was not intended to be exclusive (297 F. Supp. at 522). The court proceeded on the theory that grant conditions attach to the grant and acceptance by the grantee creates an obligation to perform the condition. See Dec. *Comp. Gen.*, B-149441, December 6, 1962 (unpublished); Dec. *Comp. Gen.*, B-152505, January 30, 1964 (unpublished).

[18] See our October 14 memorandum on the Mondale Amendment, and the 1949 memorandum, cited *supra* note 1. Compare the following language in *Dec. Comp. Gen.*, B-149441, December 6, 1962: "It is our view that these grants-in-aid are not statutory unconditional grants or gifts and may not be so made by administrative action. The offeree is free to accept or reject the grant. The acceptance of the grant creates a contract, between the United States and the grantee under which the moneys paid over to the grantee, while assets in the hands of the grantee, are charged with the obligation to be used for the purposes and subject to the conditions of the grant. Clearly, the United States has a reversionary interest in the unencumbered balances of such grants, *including any funds improperly applied*. It is the responsibility of the Department for seeing that the grant funds are applied to the purposes and objects for which made, whether the grant is made for specific objects of expenditure such as teachers' salaries, books, eqnipment, etc., or for the general support of the school." (Emphasis added.)

[19] Compare I Corbin on Contracts § 6(1962) (misrepresentation affords a basis for avoiding contract). Authority for the proposition that a grant partakes of the nature of a contract can be found in the Comptroller General decisions cited *supra* notes 17 and 18, although the same decisions also treat such grants as imposing trust type obligations on the grantee.

[20] See also 31 U.S.C. 231 (liability of persons making false claims upon or against any department or officer of the United States) and 18 U.S.C. 1001 (criminal penalties for false statements with respect to matters within the jurisdiction of a department of the United States).

project funds are used to construct a school or are used to hire new teachers in schools not part of the desegregation plan or to purchase equipment not authorized under the project application.)

Termination of the grant for failure to comply with the grant condition that funds be spent only for authorized purposes and only to cover costs conforming to the approved project proposal (45 CFR § 181.4; Terms and Conditions, paragraph 4) is, of course, an available remedy.[21] Moreover, it would appear that following termination, recovery of funds devoted to the unlawful purpose prior to termination would be in order under paragraph 11, of the General Terms and Conditions, since the "financial obligations" to which such funds were applied would not have been allowable even if the grant had not been terminated. In effect, the use of the funds is a diversion and is appropriately the subject of an audit exception and recovery.[22] The matter can also be put in terms of the notion that "the United States has a reversionary interest in the unencumbered balances of [Federal grants-in-aid made for specific purposes], *including any funds improperly applied*".[23]

Presumably, specific performance would be, in theory, available to require the grantee to stop making the unauthorized expenditures, but it is hard to see where this remedy is likely to be more effective than termination, or a threat thereof, and proceedings to recover the funds.

Payment Adjustments

As indicated above (p. 10), an outright deferral or suspension of grant assistance pending termination is not an available remedy in the case of a breach of condition or unauthorized expenditure. However, under certain circumstances, the Commissioner's periodic payments to a grantee, may be adjusted downward to reflect previous payments which have been used for an unauthorized purpose.

Section 425 of the General Education Provisions Act (20 U.S.C. § 1232d (Supp. Sept. 1970)), which is applicable to ESAP, states:

> Payments pursuant to grants or contracts under any applicable program may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments as the Commissioner may determine.[24]

Neither the ESAP regulations, the ESAP terms and conditions, nor the Grant Administration Manual make specific reference to the manner in which payments are to be made. It appears that the making of payments by way of installments is designed to enable the grantee to meet grant obligations as they arise. The applicable form (Form OE 5141, 8/69) is entitled, "Quarterly Estimated Requirements for Federal Cost", and requests the grantee to specify a date by which the "estimated cash is *needed*".[25] Payment of installments should, therefore, reflect the needs of the grantee for additional funds to carry on the program as authorized under law and the terms of the approved project.

Accordingly, if funds previously paid to a grantee have been used for a clearly unauthorized purpose and the grantee submits a request for additional funds to meet future needs, the previous payments must be taken into account as if they had not been spent. The previous payments may be treated as an "overpayment" which gives rise to an appropriate adjustment by the Commissioner within the meaning of § 425 of the General Education Provisions Act (quoted above).[26]

Let us consider the application of these principles to several examples:

(1) A grant is approved for a remedial reading project (as set forth in the grantee's application) for children in a school paired pursuant to a desegregation plan. The Commissioner determines that project monies are being put to an unauthorized use because the remedial programs are carried on in a different school not affected by the desegregation plan. If the LEA corrects this problem,

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[21] See text *supra* pp. 7–10.

[22] See § 424 of the General Education Provisions Act (20 U.S.C. § 1232c (Supp. Sept. 1970)). See 1949 memo, *supra* note 1, at 4 (a diversion is a use beyond the limitations that characterize the substance of a program and provides a basis for an audit exception).

[23] *Dec. Comp. Gen.*, B-149441, December 6, 1962 (unpublished) (emphasis added). See note 18 *supra*.

[24] For OGC opinions considering the nature of an "overpayment," see letter from Alanson Willcox to John W. Douglas, June 11, 1965, re Fraud Claim for Reimbursement under Title III, NDEA; memo, Michael A Wyatt to Norman Brooks, January 3, 1967, responsibility of Iliff School to reimburse its Federal College Work-Study fund for payments to certain students.

[25] (Emphasis supplied.) See paragraph 8 of the terms and conditions, which cross references OE Forms 5140 and 5141 (attached Tab C).

[26] This theory would also appear to find support in the Comptroller General's observations that the United States has a reversionary interest in grant funds which have been "improperly applied", these funds simply being treated as part of the "unencumbered" balances which are subject to that interest.

and the Commissioner desires to continue the grant, prior payments with respect to the project covering the period of unauthorized use may be taken into account as unexpended funds in determining the grantee's "needs" for further payments under the continuing grant. In effect, the funds used by the grantee for the unauthorized purposes are treated as diverted funds [27] giving rise to a potential audit exception which may be remedied by an appropriate adjustment to future payments.

If the grantee, while changing its program to conform with the Commissioner's view as to the proper use of funds, disputes the Commissioner's determination that previous payments were used for an unauthorized purpose, then it is entitled to the procedures normally incident to the taking of an audit exception. However, the procedural problem does not obviate the availability of the remedy of setoff against future payments.

The adjustment of payments remedy would also appear available where termination proceedings were being pursued on a ground independent from that upon which the adjustment for overpayment was based.

(2) Let us suppose that the Commissioner decides to terminate the grant because the grantee is continuing to make unauthorized expenditures despite the admonitions of the Commissioner (failure of the grantee to carry out the project in accordance with its terms). That the transaction gives rise to conformity proceedings as well as to an audit exception again should not prevent proper adjustments to reflect overpayments.[28]

(3) A more difficult problem is encountered where the manner in which the ESAP project is being carried out is so at odds with the program purposes, that in effect funds are being spent for an unauthorized purpose and thus have been diverted. In such cases, the line between breach of condition giving rise to termination and diversion of funds giving rise to audit exception would seem to vanish.

For example, assume that the grantee conducts the remedial reading project in the paired school but the school is characterized by complete in-school segregation within the meaning of 45 CFR § 181.6(a)(4)(vii). Depending on the circumstances, it may be said that the manner in which the project is being carried is so inconsistent with the purpose of the ESAP program (45 CFR § 181.2) that the activity (although nominally allowable) is not authorized within the meaning of the regulations (45 CFR § 181.4).[29]

If this is the case, under the foregoing principles, any payments to the grantee for carrying out the project during the period in which it engaged in the in-school discrimination could be considered as unused funds in the grantee's possession for the purposes of determining the future payments, whether the grantee corrects the situation and is left to continue the grant or termination of the grant is sought.

While in theory the above principles may be sound, it may be difficult to determine in each case whether the manner in which a grant was conducted was so inconsistent with the grant purposes as to give rise to an audit exception. Does the principle apply to a violation of the advisory committee rule, or to a case where the cafeteria but not the remedial reading classroom is segregated, or to a case where faculty discrimination is alleged?

These difficulties notwithstanding, it would appear that the legal basis for payment adjustments to reflect diversions is sound and that you should be aware of these possibilities in the administration of the ESAP program. In particular cases, should you feel that applications of the foregoing principles might be appropriate, we would be glad to be of assistance in considering the matter further.

V. Mondale Amendment

Violations of the Mondale (transactions with private schools) Amendment during the pendency of a grant give rise to special problems and are therefore treated separately.

1. Let us assume that, following the award of its ESAP grant, an LEA commences the lease of property to a private school practicing discrimination on the basis of race or donates or sells its property or services to such a school. The Mondale Amendment to P.L. 91–380 added a proviso to the ESAP appropriation the effect of which is to preclude the use of funds appropriated under that act to assist a school district which "engages" in such a transaction. This prohibition is reflected

[27] See generally 1969 memo *supra* note 1. Application of this principle may, as a practical matter, be complicated by internal organization procedures with regard to the conduct of audits. (See Org. Manual 2-670.)

[28] This memorandum does not deal with the extent to which or the manner by which a grantee using funds for an unauthorized purpose may be compelled, as a condition to continuation of the grant, to perform the services which would have been performed had the diversion not taken place.

[29] Section 181.4 provides that projects assisted under the program must be "designed to contribute to achieving and maintaining desegregated school systems . . .". Section 181.2 describes the purpose of the program.

in the ESAP regulations, 45 CFR § 181.6(a)(4)(iv), under which an LEA applying for ESAP assistance is required to provide, in its application, satisfactory assurance that it will not engage in such a transaction. Engaging in such a transaction thus constitutes a failure to carry out an approved project in accordance with applicable law, and, therefore, affords a basis for termination of the grant under paragraph 11 of the Terms and Conditions.[30]

2. Moreover, it appears to us that an ESAP grant *must* be terminated where the grantee has, after award of the grant, donated, leased, or sold property or services under circumstances proscribed by the Mondale Amendment, at least where the transaction cannot be successfully undone.[31] That Amendment, by restricting the use of funds to those LEA's which do not engage in the prohibited transactions, in effect sets up a continuing condition of eligibility for receipt of assistance under an ESAP grant; to remain eligible for that assistance, the grantee must refrain from engaging in a transaction prohibited by the Mondale Amendment during the pendency of the grant. Having engaged in such a transaction, by the terms of the appropriation act itself, the grantee may no longer receive assistance paid for out of the appropriation. Were the rule otherwise, a grantee could give or sell property to a private "segregation academy" and still continue to receive assistance under the ESAP appropriation, a result which seems to run counter to the statutory prohibition in P.L. 91-380.

Moreover, if we construed the statute as permitting a grantee which had, after the award, given or sold property to a segregation academy to continue to receive assistance, we would in effect read the two aspects of the Mondale Amendment differently. The Mondale Amendment provides that no part of the funds appropriated for emergency school assistance may be used to assist an LEA which either "engages" or "has unlawfully engaged" in a proscribed transaction. We read the "past transaction" aspect of the amendment as mandating the ineligibility of an LEA if it has engaged in any such transaction determined to be unlawful under the criteria set forth in our October 14 memorandum. (See 116 Cong. Rec. S. 9898, daily ed., June 25, 1970 (colloquy between Senator Mondale and Senator Stennis).) If we maintained that a post-award future transaction which violated the amendment did not require disqualification, we would in effect be applying a different and somewhat easier test in this respect to the future transactions than we did to the past, an anomalous result, in view of the apparent sentiment in the Senate at the time the Mondale Amendment was debated that its past or retroactive bite was more disquieting than its effect on future transactions (see 116 Cong. Rec. S. 9899, June 25, 1970, remarks of Senator Stennis). Accordingly, we view termination in the case of a Mondale Amendment violation after grant award as mandatory.[32]

By the same token, the carrying out of a forbidden translation *after* award should lead to a similar result. The above conclusions are consistent with the view that we have taken of analogous prohibitions in appropriations forbidding the use of funds for Federal financial assistance to students who engage in disruptive conduct. Section 411 of the Department of Health, Education, and Welfare Appropriations Act, 1969 (P.L. 90-557) prohibited the use of funds appropriated under that Act for a loan, guarantee of a loan, or a grant to an applicant convicted by any court of general jurisdiction of certain crimes aimed at disrupting institutions of higher education. Our Division has taken the position that, while primary responsibility for enforcement of the section might be placed on the institutions administering the assistance, the Department would be obligated to disallow charges against funds appropriated by the 1969 act for amounts expended by an institution in violation of § 411 (memo from Harry J. Chernock, Assistant General Counsel for Education to Albert L. Alford, Assistant Commissioner, Office of Legislation, March 17, 1969); we also took the view in informal advice that upon receipt of specific information as to the continued eligibility, under section 411, of an applicant for grant assistance, an institution would be expected to make inquiry and to take action accordingly to terminate affected benefits.

3. There remains for discussion the degree, if any, to which the termination of a grant for a Mondale Amendment violation affects the flow of ESAP funds to an LEA with respect to obligations incurred under an ESAP grant prior to termination. As indicated above, under the General Terms and Conditions allowable costs incurred under an ESAP grant prior to termination must be reimbursed

[30] See text *supra* pp. 8-10.
[31] See our October 14 memorandum at p. 8.
[32] By way of analogy, as indicated above, pp. 3-6, if an ESAP award was made by error to an LEA which had unlawfully engaged in a transaction proscribed by the Mondale Amendment, prior to award, we would be obliged, after discovery of the situation, to annul the grant as unauthorized.

with grant funds. The issue thus becomes whether obligations incurred *after* the Mondale Amendment has been violated but before termination give rise to "allowable costs" for this purpose. Since funds appropriated to carry out the ESAP program may not be used to assist an LEA which engages in a transaction forbidden by the Amendment, we think that obligations incurred by a grantee after it engages in such a transaction are not allowable costs and that ESAP funds expended to cover such obligations would be subject to audit exception. We believe that the statutory restriction on use of appropriated funds requires this result. To put the matter another way, once an LEA has disqualified itself by engaging in a transaction forbidden by the Amendment, its costs may not be covered with ESAP funds.

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JULY 26, 1949.

Mr. ALANSON W. WILLCOX,
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Preliminary report of Committee on "Audits"—Federal-State grants-in-aid—Legal basis for Federal assertion that certain types of State grantee action create a money obligation for which State must account

As the Committee understands its assignment, it is to explore in general the conditions under which there is legal support for assertions by the Federal Security Agency as grantor that State-grantee action has created a "debt" or a money obligation for which the grantee must account. The Committee has not considered what remedies or sanctions may be available once such an obligation is established.

The Committee has discussed various considerations and has reached certain tentative conclusions. These are called to your attention now for discussion purposes. There is some question in the Committee's mind whether further needed exploration of the problem can be done effectively by a committee, or in fact whether a unified approach is feasible in view of the diverse statutory provisions. The immediate need is for a testing of the tentative conclusions against the specific statutory provisions controlling the programs in question.

USE OF TERM "AUDIT EXCEPTION"

There is need for a more uniform use, and a more precise understanding, of the term "audit exception". It has been used indiscriminately to refer to matters that differ legally in substantial respects. For example, administrative practice has included taking an "audit exception" to State action in failing to produce evidence of a particular kind in support of an expenditure even though there was no indication that a misexpenditure had occurred. Again, "audit exception" was used to report a State fiscal practice that was defective in its failure to make use of ordinary controls that would reduce the risk of misappropriation even though in the particular instance it was admitted that there had been no misappropriation. As used herein, "audit exception" applies only to the process by which the Federal grantor asserts that a money obligation arises or a financial adjustment should be made.

GENERAL CHARACTERISTICS OF THE FEDERAL GRANT-IN-AID PROGRAMS

The Committee has not made a review of the various statutory and regulatory provisions that establish and govern the Federal administration of the several grant-in-aid programs of the Agency. It has assumed that the following general characteristics obtain as to all programs:

(1) Funds are granted upon express conditions binding on the grantee, such conditions usually relating both to the "program" purposes for which the funds may be used and also to the grantee's methods of administration.

(2) Authority is vested in the Federal grantor to exercise a certain degree of judgment as to the amount of Federal money "necessary" to enable the grantee to meet the cost of administration of the program.

(3) There is included specific conditions and procedures on the basis of which the grantee's participation in the program, in whole or in part, may be suspended or terminated.[1]

TENTATIVE CONCLUSIONS

On the basis indicated above, the Committee has reached the following tentative conclusions. They are presented according to the type of State-grantee action involved.

I. Violation of State law

The Committee suggests that in general the fact that a State expenditure is in violation only of State law, is not a basis legally for a Federal audit exception. This view is based on the position that no Agency grant-in-aid statute endows the Agency with authority to supervise and enforce the extent of State compliance with its own law. Violation only of State law is essentially irrelevant to the Federal function; in many cases such violations are more in accord with Federal program objectives than compliance. The fact that funds involved in a violation had a Federal source is not significant unless the State is to be reduced to the position of more agent or conduit. If a particular provision of "State law is validly incorporated into Federal requirements, different questions arise.

It is acknowledged that in programs where the amount of funds granted is that which is necessary for the "proper" and efficient administration of the State law or plan, the view has been taken by the Office of the General Counsel that the Federal agency could reasonably determine that an expenditure illegal under State law is not one necessary for "proper" administration. The Committee tends to the view that it is more sound to consider that the word "proper" in this context was merely intended to permit judgments as to State administration more broad than would be permitted by the term "efficient", but was not intended to authorize imposition on the States of a Federal concept of propriety as to matters having no necessary relation to the Federal program objectives and conditions as expressly set forth in the Federal acts. "Proper" administration might well require adequate State provision for, and funds to enforce State penalties for violation of State law, but it is questionable whether such a Federal judgment supports adding Federal "penalties" to those of the State.

II. Violation of Federal requirements or "standards"

As used here, Federal requirements or standards means nothing more specific than any authorized condition or rule established by Congress or the Agency to govern State use of granted funds and State administration of program. The Committee feels it advisable to attempt to divide violations here into three categories; the first will be called "Diversions", the second, "Unnecessary Expenditures", and the third will be called "Expenditures Associated with Noncompliance or Nonconformity as to Administrative Method." Under each heading there is a discussion of the sense in which each is used. The Committee is not completely satisfied with the analysis implied by these headings and recognizes an obligation to achieve a classification both mutually exclusive and jointly exhaustive.[2]

A. Diversions.—"Diversion" is used here to apply to those granted expenditures beyond the scope of the program and for purposes other than the program purposes for which the funds are granted. To define by general example, no "diversion" is considered to exist if more funds are spent for a proper program purpose than the federal grantor has said was "necessary." Nor is there necessarily any "diversion" in the expenditure of Federal grant funds to meet the expenses of administration in violation of a Federal standard governing methods of administration. Diversion is considered simply a use beyond the limitations that characterize the substance of a program. For specific example, to pay old age assistance to a person not found by the State agency to be 65 is a diversion since the age of the recipient here is a basic definitional aspect of the program.

The Committee has no doubt that in cases of diversion, an audit exception is legally well founded. The specific sum diverted is automatically the measure of the loss to the program.

B. Unnecessary Expenditures.—These are in general expenditures contrary to some fiscal or other standard adopted by the Federal agency to implement, and to

[1] This is not true of grants under section 8 (a) of the Water Pollution Control Act nor under part B, title V of the Social Security Act (Child Welfare Services).

[2] For example, no express consideration is given herein to the situation of outright loss of funds by theft or catastrophe.

fix the measure of the amount of Federal funds "necessary" to carry out the program. In the context being considered, an unnecessary expenditure is not necessarily a diversion although it may be true that all diversions are unnecessary expenditures. But money in excess of a fiscal standard may still be spent for legitimate program purposes. For example, if there be a limit of $1,000 on the amount permitted for the purchase of an automobile for official program use, then the expenditure of $1,500 is to the extent of the excess unnecessary even though the vehicle is still used solely for program purposes. Unnecessary expenditures may include not only expenditures in excess of the prescribed amount, but also expenditures for items or matters that, while they may be used exclusively to serve the needs of the grant program, are considered unnecessary in their entirety to its proper or efficient administration.

While there may or may not be a difference between this last category of unnecessary expenditures and a true diversion, it is not new material for the Committee's purpose to determine since the Committee agrees that an audit exception is legally supportable as to expenditures contrary to an authorized fiscal standard. As long as the Federal agency has discretion to measure the amount to be paid and used, such Federal authority is appropriately ordered by audit exception.

C. *Expenditures associated with nonconformity or noncompliance as to methods of administration.*—In addition to prescription by law of the specific program purposes for which the granted funds must be used, most if not all programs include other express conditions to the grant. Generally, both the grantee's law or plan must "conform" to those conditions and the administration in fact must "comply" at the express risk of having his participation terminated or suspended.

The type of condition herein involved has no necessary relation to the distinguishing characteristics of the program or directly with its substantive purposes. In fact, it is in this area often that the conditions are either identical or similar for several of the Agency programs. These conditions relate largely to securing preferred methods of grantee operation or to assuring sufficient information to the grantor to permit it to administer the Federal act. Types of such conditions are:

(1) Opportunity for a "fair" hearing to beneficiaries whose claims have been denied.
(2) Methods of operation, including merit system of personnel administration, to assure proper and efficient administration of the grantee's law or plan.
(3) Assuring confidentiality of information relating to beneficiaries.
(4) State-wide operation.
(5) Single State agency responsible for administration.
(6) Making reasonable reports and supplying information to the grantor.
(7) Requiring certain specific practices in depositing, accounting, or other handling of funds granted.

It is useful here first to express the Committee's tentative conclusions under two separate headings, and then to discuss the problems involved:

(1) *Expenditures in the administration of deviations from Federal standards not in accordance with the grantee's law or plan*

Here the State law or plan deviates from Federal requirements but not so substantially as to require a finding of nonconformity. Expenditures in the administration of the deviations are lawful under the State law. The Federal discretion has operated in favor of a finding of substantial conformity. It is the Committee's view that an audit exception is not legally supportable.

(2) *Expenditures in the administration of deviations from Federal standards and contrary to the grantee's law or plan*

Here the State law or plan complies without deviation from Federal requirements but in fact the grantee's administration deviates both from such law or plan and from the Federal requirement. With less unanimity, the Committee tends to the view that since by definition the expenditure is "necessary" as previously discussed, an audit exception is not supportable.

The general basis for this view is that since the violation of State law alone is irrelevant, there is left only a lack of compliance in administrative method. This lack is, by assumption, not so substantial as to require a termination of the grantee's participation. If so, there is nothing legally significant that would distinguish this situation from that in which the State law or plan deviates but also in a non-substantial way.

DISCUSSION

It is in this area that, in spite of similarity among programs in the administrative standards, significant differences may exist in the Federal authority pertinent to the audit process. The Employment Security program, for example, is based on statutory provisions that may legally justify different results than those indicated above.

In general, however, the difficulty in sustaining an audit exception in this area is suggested by the necessity of characterizing the expenditure as one "associated with a deviation." The fact is reasonably clear that the actual expenditure of funds is not itself contrary to any Federal requirement; the situation is thus unlike the case of a deviation or of an unnecessary expenditure. For example, salary payments to an individual whose position is necessary to carry out the program and the amount of which is not in excess of what is necessary, do not violate any Federal requirement even though the individual was selected on a basis differing from that required by the merit system standards. Here the salary funds are not misused or misappropriated in any normal sense. It is the selection and appointment process, not the performance of services, that violates the requirements.

Second, there is no necessary relationship between the deviation and the *amount* to which an exception is usually taken. In the illustration above, the salary amount has no necessary relationship in fact to the "harm". Even if we assume that it would be reasonable for the Federal agency to declare that an appointment deviating from the standards results without more evidence in less qualified personnel, it would not be reasonable in the absence of other evidence, to say that the appointee's services are of no value so that an exception to the entire salary would be taken. The Committee doubts any Federal authority to evaluate the harm in terms of the degree in which the incumbent is doing as satisfactory a job as would a person appointed under the merit system. If the situation is not evaluated in these terms, however, the audit exception to the total salary payment would then be not a matter of provable loss or even damage but of assessment of a penalty. There is no authority for such a penalty.

Third, if an audit exception applies as to one administrative method provision, it would legally be applicable to all administrative method requirements. As far as we are aware, it has not been so applied by the Agency. To consider the possibilities illustrates the difficulties. For example, the expense of maintaining necessary records would not presumably be subject to an audit exception merely because the records were made available in terms inconsistent with the Federal requirements of confidentiality. It is true that expenditures solely for the purpose of making such records improperly available might well be considered "unnecessary" or even possibly a "deviation" to the same extent that excessive salary payments or payments to a person not performing services for the program might be considered respectively either "unnecessary", to the extent of the excess, or a deviation.

It is the Committee's general feeling that the grant programs contemplate two distinct types of Federal control; The first is fiscal control directed by means of audit exceptions to preventing or recouping diversions and unnecessary expenditures; the second is control of administrative method by evaluation of operations to determine whether the grantee should be permitted to continue participation in the program. The fact that the consequence in the second case is likely to be drastic does not justify application to the second area of the controls appropriate only to the first.

57-952 O—71——5

SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY STAFF STUDY ON THE ADMINISTRATION OF THE EMERGENCY SCHOOL ASSISTANCE PROGRAM

January 1971

I. INTRODUCTION AND SUMMARY

Funds from the $75 million have been granted to pre-selected school districts in response to a minority head count eligibility formula and pressures from Washington to award grants as quickly as possible there has been no calm, firm assessment of emergency desegregation needs of individual school districts across the nation.

School districts with proven bad records of civil rights compliance have been funded;

grants have been awarded prior to applications being filed; eligibility was determined by headcount rather than emergency needs;

minority individuals, organizations and community effort have been ignored if not shunned;

districts not in "terminal phase" have been funded;

capital investment purchases have been allowed;

general aid to education, architectural services and building programs have been authorized;

regular qualifications standards in the hiring of teachers have been suspended in order to avoid hiring of minority personnel;

civil rights clearances have been given by special teams from Washington and Vice President Agnew's Advisory Committee; and

hundreds of grants—involving millions of dollars—have been signed off and awarded to school districts by financial grants officers who admit they never looked at the applications.

II. SCHOOL DISTRICT ELIGIBILITY

On July 13, 1970, the Secretary of HEW "clearly stated that the *purpose of this assistance program was to fund quality desegregation projects in the school districts where the need was greatest and where the chances of cooperation were best.*" (Exhibit 1, HEW internal memorandum—August 24, 1970).

The Administration led the Congress to believe that the $75 million would be spent on project grants, that funds would not be allocated among districts simply on the basis of the number of black children in the district but on the basis of an evaluation of the districts' special needs and of the quality of the program proposed to meet those needs.

At the Senate Appropriations Committee hearing on ESAP, the following exchange took place:

"Senator BYRD. What formula will control the distribution of these funds among the States?

"Mr. VENEMAN. *In the supplemental it would not be a statewide formula. It would be based upon the needs of individual school districts.*

"Senator BYRD. Will the administrator of the program have complete discretion in the distribution of funds?

"Mr. VENEMAN. He would have. The Commissioner of Education would be approving *projects* according to certain criteria that would be established. The criteria as they relate to this supplemental request would require that the funds be used to overcome problems associated with de jure segregation."

Before the Senate Subcommittee on Education, Secretary Richardson said: "It is not possible to estimate a per-pupil grant because of the varied projects that each district will design to meet its own particular needs. Grants will not be made by dividing the universe of students by funds available."

Section 181.10 of the ESAP regulations requires the Commissioner to consider the following criteria in determining whether to provide assistance under the program:

(1) the applicant's relative need for assistance;

(2) the relative promise of the project or projects to be assisted;

(3) the extent to which the proposed project deals *comprehensively and effectively with problems* faced by the local education agency *in achieving and maintaining a desegregated school system.*

Section 181.6(a) of the Regulations requires that an application for assistance must:

(1) Set forth a *comprehensive statement of the problems faced* in achieving and maintaining a desegregated school system including a *comprehensive assessment of the needs of the children;* and

(2) Describe one or more activities that are designed to comprehensively and effectively meet such problems with assistance requested under the program.

Despite its own regulations and despite repeated statements that ESAP was to be a "project grant" program, funds were allocated to school districts by eligibility formula.

After a meeting with the Vice President's Advisory Committee on Desegregation, the Commissioner decided on four factors as the determinant of each district's priority ranking. Each district was ranked from 12 (highest rank) to 4 (lowest rank) on each factor, determining whether a district would receive $28, $18 or $10 per minority child.

The four eligibility factors are:

1. Percent of minority enrollment.
2. Effective date for terminal desegregation.
3. Likelihood of cooperation and success in the district based on past record of compliance and judgments.
4. The proportion of students within a district reassigned as a result of the desegregation plan.

HEW began funding projects three days after this formula was released to its regional offices. HEW at the very time it was notifying each regional office of the specific amount of funds to which each of the 1,318 school districts were eligible for ESAP funding:

Lacked compliance information on 343 of these districts—involving 1,413,354 minority children;

Had a bad record of civil rights compliance on 394 of these districts—thus an unlikelihood of compliance in those districts, involving another 941,070 minority school children; and

Lacked any information—except number of students—in an additional 247 districts, involving 305,934 minority children.

Thus, at the time HEW began funding from its computerized list of 1,318 "eligible" school districts—it either lacked sufficient information to meet its own scale-standards, or had records proving bad compliance records in 75% (984) of the 1318 target districts—involving 2,660,358 minority school children (76%)

III. THE APPROVAL AND FUNDING PROCESS

Despite this obvious lack of information and record of non-compliance, HEW regional offices proceeded two days later, August 26th, to conduct state and regional meetings with the 1,318 "eligible" school districts on the Washington-supplied list.

In these hastily-called meetings, school officials, rather than being asked to delineate their "emergency needs" so an assessment for rational funding could be made to comply with the Secretary's stated purpose of funding "quality desegregation projects," were given a "ballpark" dollar figure of ESAP funds to apply for immediately, with each districts, total dollar amount based on $28, $18 or $10 per minority head, rather than on the stated concept of placing the money "where the need was the greatest and the chances of cooperation were best." HEW thus subverted the intent of its own program right from the very beginning.

School officials who attended these first meetings said later:

"The information released in this meeting was very indefinite." (Jackson, Mississippi—August 26.)

". . . Again, the information was limited." (MSU—September 2.)

"Very little information was given out, and there was confusion and open bitterness among the superintendents". (Columbia, S.C.)

Nevertheless, in the following eight days, HEW found it possible to fund many projects. Outstanding among the first are:

Jackson, Mississippi—funded for $1.3 million the day after the initial meeting—and *four days before it filed an application.*

Davidson County (Nashville) Tennessee—funded for $565,000 on September 2—although it was not in "terminal phase" of desegregation, and still is not.

Charleston, S.C.—funded for $441,000 on September 1—and *the financial grants officer of HEW admits he didn't even look at the application.*

In California, a state-wide meeting was held at Riverside on September 21, 1970. A dozen or more school district representatives were told California's allocation was $536,000 to be spread among 18 eligible districts. Pasadena was told it could apply for a "ballpark" figure of $125,000. On October 1, Pasadena was advised by the HEW program officer that only Pasadena and Inglewood were eligible for funding. "In that case," said the Pasadena representative, "we can apply for more." "No," said the program officer, "the balance of the funds have been taken away from California." No one in California knows where they went.

IV. THE 24-HOUR AND 36-HOUR TURNAROUND PERIODS

Following this first burst of grants, HEW/OE regional offices settled down to a Washington-imposed 24-hour turnaround for application approval or rejection—a process which led program director to say he was "greatly concerned about some of the projects we have funded, but we were under pressure from Washington to get the money out."

A regional civil rights director, questioned about clearance for districts granted projects during this period, stated, *"If you want to know anything about these applications, you'll have to ask the people who handle them*—Sam Tilton, from the General Counsel's Office of HEW in Washington and Gwen Gregory from the Vice President's Committee."

A financial management regional officer said, *"The procedure is simply a look at whether there's any money left in the state allocation—if there is, we give it to them."*

A regional grants officer—who has final approval responsibility—stated, *"This is a rubber-stamp, blank-check operation. I don't know what's in any of the—applications." (At the time of our visit, he had signed 563 grants totalling $37.2 million.)*

This 24-hour pressure was maintained for a week or ten days and then was relaxed to a 36-hour turnaround—with the same review procedures maintained.

Finally, in late September and early October, this was relaxed to an open-end turnaround procedure—but millions of dollars had been disbursed because the Commissioner had ordered that 75% of a state's allocation would be obligated in the month of September.

881 districts have been funded for a total of $60.3 million—leaving 437 districts to scramble for the remaining $3.9 million: with major projects scheduled to be approved in New Jersey, Missouri and Louisiana.

The Chairman of one southern state advisory committee told this staff, "We need $140 million for our emergency desegregation needs—they allocated us $5 million we've got $11,000 left and our most critical school districts are receiving nothing."

V. SUPPLEMENTAL GRANTS

At the time visited, the Dallas HEW regional office had awarded 47 "supplementary" grants—of which I reviewed 34.

All of these projects received "supplementary" grants in the period between October 20–30. This immediately followed on the heels of the Washington decision that Dallas, Ft. Worth and Austin were eligible and that the approximately $3 million held for these cities released.

The procedure for supplementing the original grants, according to the Dallas program officers, was to telephone the original grantees and say, in effect, "We have some more money available—what would you like now to bring you up to your original request."

Program and dollar amounts were agreed to on the telephone and the money was disbursed—with the district requested to send in a letter saying what they would use the money for.

Asked why this money was utilized for "supplementary" grants instead of funding new, needed projects, the senior program officer stated, "New applications were just not coming in and we were under pressure to get the money out."

VI. THE HEW FIELD REVIEW PROCESS

For the past six weeks, HEW program officers, along with Office of Civil Rights compliance people, have been "in the field" trying to find out "where the money went." Among other things they have discovered to date, are:

A school district purchasing trucks and carpets (Charleston, S.C.).

A school district purchasing high priced electronic and movie equipment without a related program (Houston, Texas)

An architect authorized to design a major building program (Kinston, N.C.)

A straight remedial reading program with no reference to desegregation in the school system. (Bamberg, S.C.)

A school district project that was written by the same HEW officer who approved it—and is the same one who reviewed it for continuing funding (San Antonio)—even though only two of its seven components had barely got underway at the time of our visit in January.

Since HEW's own field review of the Charleston, S.C. project stated:

"This project does not relate to the problems resulting from desegregation." (A basic requirement of ESAP regulations.)

HEW officials were asked if they would initiate action to stop funding of the project and commence suit to recover expended funds. The reply was:

"Are you crazy. Do you really think that HEW Washington and Justice would file suit in Strom Thurmond's state?"

The General Accounting Office is, apparently, conducting an investigation into HEW-ESAP procedures also seeking to "find out where the money went." GAO officials were encountered in four HEW regional offices. Their comments:

"There is no audit trail to follow."

"If the whole government was run the way this program is, we'd be in a hell of a mess."

In a further effort to discover what it has wrought, HEW has now awarded a $500,000 contract to a private consultant firm to seek answers to five areas of HEW concern:

1. Verification of what is going on with the project.
2. Effectiveness of the project in an educational sense.
3. Role of the project in desegregation.
4. Utilization by the school district of HEW technical assistance.
5. Project management.

The consultant firm will seek these answers in 250 school districts—and then, in May, will do a "selective sample" of 20 HEW pre-selected districts attempting to find out what they did right.

SUMMARY CONCLUSIONS

Thus, in this overview, we have seen:

Computerized eligibility declared without adequate information.

Districts with recorded bad records of compliance funded.

Inadequate information dispensed by HEW to school districts and community organizations.

Untrained personnel evaluating and approving projects.

ESAP regulations ignored or overlooked.

Funds granted by head-count rather than need.

General aid to education funded.

Political pressure rather than quality of the project as a determining factor.

Minority group discrimination in advisory committees and hiring practices within the projects.

Millions of dollars expended with no HEW application review.

Project deficiencies known to HEW and no corrective action taken.

All leading to the inevitable conclusion that the HEW administration of ESAP has been one of funding projects simply from the computerized, numerical list of 1,318 school districts—ignoring both the human factor of children's needs and the Secretary of HEW's directive to fund only "quality desegregation projects in the school districts where the need was greatest and where the chances of cooperation were best."

JACKSON, MISS.

ESAP Grant: $1.3 million

This district was awarded $1.3 million on August 27—one day after attending the first HEW-Mississippi informational ESAP meeting.

The district's ESAP application was filed with HEW on August 31—four days after it was funded.

The Regional Commissioner stated:

"Yes, it was approved in Washington four days before we received the application. All I did was sign-off."

The Senior Program Officer stated:

"I just signed off when it came in—we didn't even review it. I'm not about to question the man in Washington."

A program review officer, with program responsibility in the Mississippi area, however, said:

"We reviewed it when it came in and we rejected it—but Washington had already approved it. You'll also see that I'm listed on the jacket covers of a lot of applications as approving them—well, I didn't. We turned down many applications that have been funded. The man would come in and say that Washington had just called and this or that application had to be released. He would just pull the rejection reviews and a new team would write reviews justifying funding."

Perhaps this statement explains the three program review sheets found in the Jackson, Mississippi file in the Atlanta regional office which state:

"Language used is quite general and vague in nature. Is portable renovation dictated by desegregation plan. Fund."

"Vague in some sections. Evaluation procedures not too clear. Question Sections (F), parts (4) and (5). Approve."

"Too much hardware. Funding."

Text Book Transfer

On September 3, Senator Mondale and the Washington Research Project notified HEW of the transfer of text books by Jackson school district to a number of private segregation academies (See Exhibit B). The text books were transferred on or about August 25, 1970; the Jackson grant having been approved August 27 and the Jackson application having been filed August 31. The Jackson Application contains a signed assurance that no property had been transferred by the schools.

On September 4 or 5, Commissioner Bell telephoned and advised the Jackson school district there was a question regarding its eligibility.

Sometime between September 3 and 6, a truck arrived at the segregated private schools to which the text books had been transferred, collected the text books and delivered them to the State School Book Depository. It is not known what else transpired during September, between HEW and Jackson. By letter dated October 1, Commissioner Bell notified the school district it was free to obligate the funds.

The check for the first quarterly payment of $325,000 had been mailed to the school district September 1.

VIRGIN ISLANDS

ESAP Grant: $45,000

The Virgin Islands' application was filed on September 22, 1970. The application was filed by Charles W. Turnbull. The application was approved by the Virgin Islands Office of Education Officer—the same Charles W. Turnbull. Charles W. Turnbull also signed off as the CPA/Accountant for the project.

This district stated in its application that "racial segregation is not under review or of any significance in this case."

An October 7, 1970, HEW memorandum stated: "No reference to or mention of any desegregation problem" was made by the applicant.

On October 21, 1970, the office of the General Counsel, in a memorandum to Mr. Jerry H. Brader, ruled this school system to be eligible for ESAP funds.

Their problem is not one of desegregation—but rather that the court ordered the school district to admit to the public schools 3,000 non-citizen resident children of the island—that the application refers to as "aliens".

SAN ANTONIO, TEX.

With an application date of October 8, this district was funded on October 15.

Originally declared ineligible in August, school district was suddenly declared eligible on October 15. School officials have no knowledge of what they did to get in line.

Or as one put it, "We didn't do anything. We simply got a letter from Pottinger saying we were eligible. I guess you'll have to ask him how come."

The Superintendent of the school district said: "There is probably about $325,000 excess in the grant."

It conceded by school district officials that Dr. Sam Miguel, an HEW program officer from Dallas, for all intents and purposes wrote the application. Dr. Miguel,

is the program officer who then recommended funding of the project at the Dallas regional office. Miguel is also the program officer who conducted the field review of this project on November 12, 1970—and described the merits and potential of the project in a glowing report.

San Antonio was visited the first week of January, 1971. Only one component of the project was operational, a voluntary, after-school program of art, music, reading and painting, and outdoor recreation.

It was estimated by school officials that they would begin to get underway around the 15th of February.

"ARCHITECT FOR BUILDING PROGRAM"—KINSTON CITY, N.C.

This district applied on September 28 for $298,887—and was awarded $101,288 on either October 1 or October 7.

The file jacket check list shows reviewer approval on October 1st—but the review sheets are dated October 6th—and the check went out on October 7th.

A comparison of the other attached sheets and dates reflects that the review sheets of October 6th were indeed prepared to match the already approved amount of $101,288 from October 1.

The seventh page of attachments is the letter from school district to R. T. Alexander, grants officer, Atlanta, confirming telephone conversation and approval of project changes . . . you will note Alexander's signature of approval at the bottom permitting the district to *"employ an architect for the approved building program in our Title 45 project."*

No where in the official application, as examined in Atlanta, or in the official jacket file was there a description or approval of any *"building program."*

When questioned as to what the program was that he had approved, Alexander was unable to explain.

DAVIDSON COUNTY (NASHVILLE), TENN.

ESAP Grant: $565,000

This district filed an application on September 2—and was awarded $565,000 on the same day—even though the district was not then, and is not now, in the required "terminal phase" of desegregation to be declared eligible for an ESAP project.

When questioned about this grant, Dewey Dodds, the Acting Director for Civil Rights in the Atlanta regional office of HEW/OE, stated:

"Just a slip-up in the early days, I guess. If you want to know about these early applications, you'll have to ask the people who handled them—Sam Tilton from the General Counsel's office of HEW in Washington and Gwen Gregory from the Vice President's Committee."

No action has been taken, to date, by HEW or Justice in this matter.

CHARLESTON, S.C.

ESAP Grant: $441,218

The district's application was received in Atlanta late in the afternoon of August 31,—and was funded prior to noon of the next day.

The main thrust of this project is to staff and establish a *television studio to produce films* to be played on 61 playback monitors in the school system.

Since the application involved some $300,000 in the purchase of AMPEX television equipment, the Atlanta financial management and grants officers were contacted concerning these item costs.

The financial management officer stated:

"The procedure is simply a look at whether or not there is any money left in the state allocation—if they (Charleston) wanted $300,000 and we had it left, we approved it."

The grants officer, who signed-off, said:

"This is a rubber-stamp, blank-check operation. I don't know what's in any of the applications."

Prior to departure from the Atlanta regional office of HEW, an HEW program officer conducted an on-site field review of the project. Among his comments in the official report are the following:

"Moreover, the project plans to purchase two trucks . . ."

"The program . . . is not dealing with emergency problems resulting from desegregation of schools."

". . . this grant is not dealing with an emergency situation".
". . . confirmed operational date of June, 1971."
"This project does not relate to the problems resulting from desegregation."

EXHIBIT 1.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
August 24, 1970.

Reply to attention of: ASPE/EP.
Subject: Determining the priority ranking of districts eligible for the $75 million Desegregation Assistance Program: background information.
To: Dr. Terrel H. Bell, Acting Commissioner of Education; Mr. Jerry Brader, Director, Division of Equal Educational Opportunities; Mr. Lewis Butler, Assistant Secretary for Planning and Evaluation; Mr. Stanley Pottinger, Director Office for Civil Rights; Mr. Richard Verville, Special Assistant to the Secretary.

On July 13, 1970, the Secretary clearly stated that the purpose of this assistance program was to fund quality desegregation projects in the school districts where the need was greatest and where the chances of cooperation were best. This meant two factors would determine the final decision on whether or not a district would receive funds:

The quality of the comprehensive desegregation plan as determined by the Division of Equal Educational Opportunities in BESE; and

The priority ranking of the district—determined by factors which combine an estimate of need and compliance probability.

The Commissioner, meeting with the Advisory Committee on Desegregation, decided on four factors as the determinants of each district's priority ranking (see his memo of July 30, 1970). These factors are listed below; note that points are distributed for each factor with three being the highest score. This means the highest priority districts will have a score of 12 and the lowest a score of 4 on the combined four factor scale.

A. Percent minority enrollment. Order of priority:

	Points given on the weighting scale
1. 40–60 percent	3
2. 20–40 percent/60–80 percent	2
3. 0–20 percent/80–100 percent	1

B. Effective date for terminal desegregation. Order of priority:

	Points given on the weighting scale
1. 1970–71	3
2. 1969–70	2
3. 1968–69	1

C. Assessment by the Office for Civil Rights of the likelihood of cooperation and success in the eligible district based on past record of compliance and judgments as follows:

	Points given on the weighting scale
1. Good past record—compliance very likely	3
2. Neutral past record—compliance possible	2
3. Bad past record—compliance unlikely	1
4. Inadequate information	0

D. The proportion of students within a district reassigned as a result of the desegregation plan. Order of priority:

	Points given on the weighting scale
1. More than 50 percent of all students reassigned	3
2. 20 percent to 50 percent of all students reassigned	2
3. 0 to 20 percent of all students reassigned	1

NECESSARY INFORMATION STILL TO BE OBTAINED

The information needed to make the first three priority estimates has been processed. However, the last and perhaps most important priority factor can only be included in the priority ranking when the actual desegregation proposals are

prepared and the applications are sent to the Division of Equal Educational Opportunity for evaluation. For this reason, in order for the four factor priority ranking to be operative as intended, there must be a time interval of at least three days between the receipt of the bulk of the applications and decisions on spending. In this time it will be possible to use an already completed and tested computer program to convert the information on number of students reassigned from the application into the priority weight, aggregate the four factors and supply a listing of all eligible districts in order of their priority ranking (as in the attached print-out).

AN OVERVIEW OF THE ELIGIBLE DISTRICTS AND THE DISTRIBUTIVE EFFECTS OF THE PRIORITY RANKINGS

The first table below provides an overview of the districts eligible for this desegregation assistance. This set of districts may change somewhat with a few additions and deletions but the numbers of minority and majority students will be roughly correct for the final program list.

TABLE I.—OVERVIEW OR DISTRICTS ELIGIBLE FOR EMERGENCY DESEGREGATION FUNDS: MISSING AND INCLUDED DATA

	Number of districts	Number of minority students	Percent of total minority	Number of students	Percent of total students
Total set of eligible districts	1,318	3,443,601	100.0	[1] 10,219,108	100.0
Total set of districts for which data is currently available	1,071	3,137,677	88.8	9,074,568	[1] 88.8
Total set of districts for which data is currently missing	247	305,934	11.2	[1] 1,114,540	[1] 11.2

[1] Approximations.

SIZE STRATIFICATION OF THE ELIGIBLE DISTRICTS

An analysis of the available data shows that a very small proportion of the eligible districts (114) contain a majority of the students (57%). This might suggest a strategy, other things being equal, of emphasis on the larger districts to assist the most students for the least number of projects.

TABLE II.—ELIGIBLE DISTRICTS—NUMBER AND PERCENT OF STUDENTS BY SIZE OF DISTRICT

Size category	Number of districts	Percent of minority students	Number of total minority	Number of students	Percent of total students
More than 90,000	13	21.9	686,829	1,815,894	20.0
60,000 to 89,999	12	6.8	214,494	882,372	9.7
30,000 to 59,999	34	14.0	438,091	1,390,348	15.3
15,000 to 29,999	55	9.9	310,938	1,121,392	12.4
3,000 to 14,999	499	37.7	1,181,753	3,160,083	34.8
0 to 2,999	459	9.7	305,572	704,497	7.8
Total	1,071	100.0	3,137,677	9,074,586	100.0

THE AGGREGATE EFFECT OF USING ONLY THE FIRST TWO PRIORITY FACTORS

The first two priority factors are the percent minority enrollment and the terminal date of the desegregation plan. Using only these two results in a top priority rating of 6 and the following distribution of districts and students among the priority categories.

TABLE III.—AGGREGATE DISTRIBUTION USING ONLY TWO PRIORITY FACTORS

Priority level:	No. of districts	No. of minority students	Percent of all minority students	No. of students	Percent of all students
6	208	694,908	22.1	1,422,049	15.7
5	409	1,587,151	50.6	3,958,891	43.6
4	278	635,246	20.2	2,191,041	24.1
3	119	178,341	5.7	1,154,566	12.7
2	58	42,031	1.3	348,039	3.8
Total	1,071	3,137,677	100.0	9,074,586	100.0

ADDING THE OCR COMPLIANCE RANKING TO THE PRIORITY FACTORS

Including the Office for Civil Rights compliance ranking results in a 9 point scale. The effect is to reduce somewhat the number of minority children in the upper priority districts: compare the 529 districts in the first three priority categories including 59% of all minority children with the 617 districts serving 73% of all minority children in the previous ranking. This choice has been made because we presumed a district's willingness to cooperate was essential to successful programs.

TABLE IV.—AGGREGATE EFFECTS OF A 3-FACTOR PRIORITY RANKING

Priority level	Number of districts	Number of minority students	Number of total minority	Total number of students	Percent of total students
9	87	433,761	13.8	883,615	9.7
8	239	971,821	31.0	2,483,950	27.4
7	203	451,634	14.4	1,079,808	11.9
6	316	877,433	28.0	2,681,637	29.6
5	170	351,883	11.2	1,589,819	17.5
4	36	34,962	1.1	272,778	3.0
3	20	12,568	.4	76,995	.8
2	0	0	0	0	0
Total	1,071	3,134,062	100.0	9,068,602	100.0

It is important to note that as of now this OCR compliance ranking provided no information on 343 districts including 45% of all minority students. In the case of no information we have given a district a 9 point score by prorating its 6 point score to 9. In this way we neither penalized nor rewarded in the instance of no information.

ADDING THE OCR COMPLIANCE RANKING TO THE PRIORITY FACTORS CONTINUED

There is a real need to attempt to do better in this compliance ranking. A complete listing of districts for which we lack information is available for OCR. If new information is received before September 6, 1970, we can add it to our data file and recompute the priority ranking for any eligible districts.

TABLE V.—ANALYSIS OF THE OFFICE FOR CIVIL RIGHTS COMPLIANCE RANKING

OCR compliance ranking	Number of districts	Number of minority	Percent of minority	Number of students	Percent of students
3	235	411,999	13.1	1,473,932	16.3
	99	367,639	11.7	1,107,979	12.2
1	394	941,070	30.0	2,549,896	28.1
0	343	1,413,354	45.1	3,936,795	43.4
Total	1,071	3,134,062	100.0	9,068,602	100.0

ACTION STEPS REQUIRED NOW

1. EEO should make qualitative evaluations of applications as they are received. Then in concurrence with OCR a recommendation on whether or not a proposal should be funded might be reached, assuming that no funding decision can be made until September 9.

2. There should be an "informal deadline" of approximately September 7. For all the applications which had so far arrived it would be possible to compute their priority ranking based on all four factors by September 9 with the help of EEO in providing the needed data from the applications.

3. After September 9, EEO should take the projects it has qualitatively approved and approve their funding in order of the priority ranking beginning of course with the highest priority districts until it had expended the 75% of that state's allocation which the Commissioner had decided to spend in September.

4. OCR should try again to formulate a compliance ranking for the 343 "no information" districts before September 7.

5. EEO should provide the enrollment totals, the terminal date and percent minority for the 247 districts where this is missing—before September 7, 1970.

INFORMATION ATTACHED

Attached is a printout which takes the districts in order of their priority ranking (based on three factors) by state. This same kind of list could be made available to EEO based on a four factor priority ranking if the above steps are taken.

MICHAEL O'KEEFE,

Director for Education Planning, Office of Assistant Secretary for Planning and Evaluation.

Attachment.

REPORT TO THE SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY UNITED STATES SENATE

Need To Improve Policies And Procedures For Approving Grants Under The Emergency School Assistance Program B-164031(1)

Department of Health, Education, and Welfare

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

MARCH 5, 1971

(71)

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-164031(1)

Dear Mr. Chairman:

This is our report on the need to improve policies and procedures for approving grants under the Emergency School Assistance Program administered by the Department of Health, Education, and Welfare. Our review was made pursuant to your request of November 24, 1970.

Sincerely yours,

Elmer B. Staats
Comptroller General
of the United States

The Honorable Walter F. Mondale
Chairman, Select Committee on
Equal Educational Opportunity
United States Senate

Contents

ABBREVIATIONS

ESAP	Emergency School Assistance Program
GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare

COMPTROLLER GENERAL'S REPORT TO
SELECT COMMITTEE ON EQUAL
EDUCATIONAL OPPORTUNITY
UNITED STATES SENATE

NEED TO IMPROVE POLICIES AND PROCEDURES FOR APPROVING GRANTS UNDER THE EMERGENCY SCHOOL ASSISTANCE PROGRAM
Department of Health, Education, and Welfare B-164031(1)

D I G E S T

WHY THE REVIEW WAS MADE

At the request of the Chairman, Senate Select Committee on Equal Educational Opportunity, the General Accounting Office (GAO) reviewed the policies and procedures of the Department of Health, Education, and Welfare (HEW) for approving grants of Federal funds to school districts to defray the costs of meeting special problems arising from school desegregation.

To meet the emergency needs of school districts that were desegregating, the President, on May 25, 1970, requested that the Congress appropriate, under six existing legislative authorities, $150 million to be made available immediately to these school districts. On August 18, 1970, the Congress appropriated one half of this amount and thereby established the Emergency School Assistance Program.

In accordance with the Committee's request, GAO selected grants made to 50 school districts for its review of approval procedures. The 50 grants, which were made by five of the HEW regional offices, totaled about $14 million, or about 25 percent of the approximately $55 million in grants made to 793 school districts as of November 13, 1970.

This review was conducted at HEW headquarters, Washington, D.C., and at five HEW regional offices. No work was done at the grantee school districts. Consequently, this report does not contain comments on the procedures and expenditures of the school districts relating to these grants. As a follow on to this review, GAO plans to make reviews at the school districts to examine into the expenditures of the grant funds.

The Office of Education and HEW have not been given an opportunity to formally examine and comment on this report, although most of the matters were discussed with agency officials.

FINDINGS AND CONCLUSIONS

Procedural Weaknesses

GAO believes that, in many cases, school districts did not submit with their applications, nor did HEW regional offices obtain, sufficient information to enable a proper determination that the grants were made in accordance with program regulations or that the grants were in line with the purpose of the program.

Most of the applications did not contain comprehensive statements of the problems faced in achieving and maintaining desegregated school systems, nor did they contain adequate descriptions of the proposed activities designed to comprehensively and effectively meet such problems. Particularly, there was a lack of documentation in the regional files as to how the proposed activities would meet the special needs of the children incident to the elimination of racial segregation and discrimination in the schools. (See pp. 26, 45, and 55.)

Therefore GAO believes that the applications in many cases did not provide HEW with an adequate means for determining that project approvals were based upon consideration of such required factors as the applicants' needs for assistance, the relative potential

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of the projects, or the extent to which the projects dealt with the problems faced by the school districts in desegregating their schools.

The files supporting most of the grants reviewed did not evidence full compliance by the school districts with the regulations concerning the formation of biracial and student advisory committees. Also most of the applications did not contain, contrary to the regulations, adequate descriptions of the methods, procedures, or objective criteria that could be used by an independent organization to evaluate the effectiveness of each project. (See pp. 38, 39, 47, 51, 58, 61, 67, and 69.)

Officials in HEW's Atlanta Regional Office which made 28 of the 50 grants reviewed, told GAO that they generally did not have detailed information beyond that in the project files concerning the program activities set forth in the applications. Some said that they did not have time, prior to grant approval, to seek additional information and had to rely on school district officials to identify the major problems which the districts faced in desegregating their schools and to propose programs to deal with those problems.

Officials in HEW's Dallas Regional Office, which made 12 of the grants agreed, in general, that many of the applications did not contain adequate statements of the problems or descriptions of the activities designed to meet these problems. Officials in both the Dallas and Philadelphia Regional Offices--the Philadelphia office made seven of the grants reviewed--told GAO that they had satisfied themselves with respect to the merits of the projects, prior to project approval, on the basis of their knowledge of the school districts' problems and of their contacts with school officials to obtain additional information as considered necessary. There was an almost complete lack of documentation in the files with respect to the additional information that was known to, or obtained by these regional officials on the basis of which they had determined that the projects merited approval.

In the Kansas City and San Francisco Regional Offices which approved a total of three applications, the applications seemed to have provided sufficient information to enable regional officials to determine that the proposed activities were in line with the purposes of the program.

Transfer of property in Louisiana

GAO noted that Louisiana law requires that school districts furnish school books and school supplies to students in private schools and provides that transportation may be furnished to students attending parochial schools. HEW regional officials contacted 14 Louisiana school districts prior to grant approval and determined that the majority had transferred property or had provided transportation to private schools under the State law. For the two Louisiana districts included in GAO's review, HEW determined that neither district had transferred property or had provided transportation to private schools. HEW decided to certify that the Louisiana school districts were eligible for program funding if it had no indications of civil rights violations other than the transfers allowed by Louisiana law.

Questionable Situations

GAO believes that HEW should have questioned, prior to grant approval, the following situations noted during GAO's review.

- --One school district appeared to have been ineligible to participate in the program, because it had entered the terminal phase of its desegregation plan prior to the time period specified in the regulations for eligibility. After GAO brought the situation to the attention of HEW officials, payments under the grant were suspended, pending a final determination of eligibility. (See p. 20.)

- --Information pertaining to another school district indicated that program funds may have been used, contrary to regulations, to supplant non-Federal funds available to the district prior to approval of its grant. (See p. 37.)

--Information in the regional files at the time that one district's application was reviewed showed that the ratio of minority to nonminority faculty in each school within the district was not substantially the same as the ratio for the entire school system, contrary to the regulations. (See p. 59.)

GAO noted another case where information that had become available after the grant was made indicated that program funds may have been used to supplant non-Federal funds otherwise available to the school district. (See p. 37.)

Reasons for Weaknesses

GAO believes that the weaknesses in the HEW procedures and practices were due, to a large degree, to HEW's policy of emphasizing the emergency nature of the program and to its desire for expeditious funding, at the expense of a more thorough review and evaluation of school districts' applications, particularly as to the adequacy of described program activities in satisfying program requirements.

GAO believes that, to overcome the weaknesses in the HEW grant approval procedures, HEW should undertake a strong monitoring program to help ensure that the grant funds already made available to the school districts are being used solely for program purposes and not for educational assistance in general. GAO recognizes that postgrant reviews at certain grantee school districts are currently being made by HEW regional officials.

RECOMMENDATIONS OR SUGGESTIONS

GAO believes that, in the event additional Federal funding is authorized for similar assistance to school districts to defray the costs of meeting special problems arising from the desegregation of elementary and secondary schools, HEW should strengthen its procedures for approval of grants to school districts. Such action should:

--Provide sufficient time for regional officials to make a thorough review and evaluation of each application received so that approval will be based on an understanding of the problems faced in achieving and maintaining a desegregated school system and on an adequate determination that the proposed activities are designed to meet such problems.

--Require that all information relied upon in approving school district applications, whether obtained orally or in writing, be made a matter of record so that the basis upon which grant approvals are made will be readily available to HEW program managers or to others authorized to review the conduct of the program.

--Provide for an effective monitoring system to help ensure that (1) grant funds made available to the school districts are being used for the purposes specified in their applications and (2) the school districts are complying with HEW regulations on nondiscrimination as well as with the other assurances given in their applications.

CHAPTER 1

INTRODUCTION

In response to a request dated November 24, 1970 (see app. IV), from the Chairman, Senate Select Committee on Equal Educational Opportunity, we reviewed the policies and procedures of HEW for approving grants of Federal funds to school districts to defray the costs of meeting special problems arising from school desegregation. This program is known as the Emergency School Assistance Program (ESAP).

Our review included an examination of the documentation in the HEW files and discussions with HEW officials relating to selected grants reported by the Office of Education as having been made to school districts by the HEW regional offices through November 13, 1970. All but one of the reported grants were made by five of the HEW regional offices. We made reviews at these five regional offices but did not make reviews at the school districts. Consequently, this report does not contain comments on the procedures and expenditures of the school districts relating to these grants. As a follow on to this review, we plan to make reviews at the school districts to examine into the expenditures of the grant funds.

ESTABLISHMENT OF PROGRAM

On March 24, 1970, the President of the United States issued a statement on school desegregation, saying that he would recommend an expenditure of $1.5 billion--$500 million in fiscal year 1971 and $1 billion in fiscal year 1972--to assist local school authorities in their efforts to desegregate. Proposed legislation to authorize these expenditures was included in the President's message to the Congress on May 21, 1970. This legislation was not enacted by the Ninety-first Congress.

In his May 21, 1970, message to the Congress, the President anticipated that final action on this legislation would not be completed in time to deal with the most pressing problems of school districts that were in the process of desegregating and those that had to desegregate by the fall of 1970. To meet the emergency needs of such school districts, the President, on May 25, 1970, requested that the Congress appropriate, under six existing legislative authorities, $150 million to be made available immediately to school districts undergoing desegregation. In response, the Congress, on August 18, 1970, appropriated one half of the amount requested by the President, or $75 million, and thereby established ESAP.

DESCRIPTION OF PROGRAM

ESAP provides financial assistance in the form of grants to school districts to defray the costs of meeting special problems arising from the desegregation of elementary and secondary schools. Statutory authority to carry out ESAP is contained in the following separate acts.

1. The Education Professions Development Act, part D (20 U.S.C. 1119-1119a).

2. The Cooperative Research Act (20 U.S.C. 331-332b).

3. The Civil Rights Act of 1964, title IV (42 U.S.C. 2000c-2000c-9).

4. The Elementary and Secondary Education Act of 1965, section 807 (20 U.S.C. 887).

5. The Elementary and Secondary Education Amendments of 1967, section 402 (20 U.S.C. 1222).

6. The Economic Opportunity Act of 1964, title II (42 U.S.C. 2781-2837) (under authority delegated to the Secretary of Health, Education, and Welfare).

The regulations governing the administration of ESAP by HEW were published in the Federal Register on August 22, 1970. The Commissioner of Education, who was vested with responsibility for administering ESAP, delegated this responsibility to the Office of Education's Division of Equal Educational Opportunities. The Office of Education's representatives in each of the 10 HEW regional offices were given the responsibility for reviewing and approving grant applications received from the school districts.

Under ESAP, a school district is eligible for financial assistance if (1) it is desegregating its schools under a final State or Federal court order or under a voluntary plan approved by HEW as meeting the nondiscrimination requirements of title VI of the Civil Rights Act of 1964 and (2) it commenced the terminal phase of such plan or court order by the opening of the 1970-71 academic year or had commenced such terminal phase during the 1968-69 or 1969-70 academic year. The regulations define terminal phase as that phase of a desegregation plan at which the school district begins operating a unitary school system--one within which no person is effectively excluded from any school because of race or color.

Applications for assistance under ESAP are submitted to HEW's regional offices for evaluation and approval or disapproval. According to HEW officials, applications were to be reviewed by regional Office of Education personnel for adequacy of program content and adherence to the ESAP regulations. Also, personnel from HEW's Office for Civil Rights located in either the regional or Washington offices were to review the applications for compliance with civil rights matters. Review for compliance with the legal aspects of the regulations was to be performed by personnel from the HEW Office of General Counsel.

Funds under ESAP may be used for such purposes as hiring additional teachers and teacher aides, providing guidance and counseling and other direct services to school children, revising school curriculums, purchasing special equipment, undertaking minor remodeling, supporting community programs, and financing other costs considered necessary to effectively carry out a desegregation plan.

ALLOTMENT OF FUNDS TO STATES

The ESAP regulations provide that the Commissioner of Education distribute ESAP funds among the States by allotting an amount to each State which bears the same ratio to the total amount of funds available as does the total number of minority group children, aged 5 to 17 inclusive, in the eligible school districts in that State to the total number of such minority group children in all eligible school districts in all States. The regulations require that a State in no event receive more than 12.5 percent of the total funds allotted. The regulations provide also that the number of minority group children, aged 5 to 17 inclusive, in the school districts be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

In late August 1970 HEW identified 1,319 school districts that were considered to be potentially eligible for ESAP funds and used the number of minority group children in these districts as a basis for allotting the funds to the States. Most of the statistics on minority group children in the school districts were based on a 1969 Office for Civil Rights survey. For some school districts, however, a combination of information obtained by the Office of Education and the Department of Justice which pertained to 1968 was used because 1969 data was not available.

Office of Education records showed that 25 States and one Territory had been allotted funds under the program. The records further showed that the allotment for Texas, if computed on the basis of the prescribed formula, would have been greater than the 12.5-percent limitation because of the large number of minority group children in the potentially eligible school districts in that State. Therefore the allotment for Texas was set at 12.5 percent of the total funds available for grants to school districts within the States, the maximum amount allowable under the regulations.

HEW records showed also that the Office of Education had not applied the prescribed formula to determine the allotment for the Virgin Islands but had reserved a $50,000 allotment for the territory. This amount was determined to be reasonable by the Office of Education on the basis of the prescribed percentages or stated maximums for territories contained in other Office of Education program legislation.

The amounts allotted for school districts within the 24 States, exclusive of Texas and the Virgin Islands, averaged about $18.65 for each minority child in their potentially eligible school districts. The average amount allotted to Texas was about $17.70 for each minority child; and for the Virgin Islands, the average amount for each minority child was $3.93.

The ESAP regulations also state that the part of any State's allotment which is determined by the Commissioner as not needed may be reallotted so that each State receives the same proportion as that it received of the original allotments and that appropriate adjustments may be made to ensure that no State receives a portion of the funds being reallotted in excess of its needs. Although no reallotment of ESAP funds had been made at the time of our review, public notice was printed in the Federal Register on January 27, 1971, that a reallotment would be made as of March 1, 1971.

PROGRAM STATISTICS

Office of Education statistics show that 18,224 school districts in the United States were operating public schools in the fall of 1969. Of these school districts, 8,611--located in 26 States and the District of Columbia--were under the jurisdiction of the five HEW regional offices whose procedures under ESAP were subject to our review. Of the 8,611 school districts, 1,271 were identified by HEW as potentially eligible for assistance under ESAP as of August 26, 1970, pending final review and determination by HEW. Of these school districts, 792 were reported by the Office of Education as having received financial grants through November 13, 1970. Detailed statistics relating to program participation in the HEW regions included in our review are shown in appendix I.

Of the $75 million appropriated for ESAP, $3.6 million was reserved for the costs of Federal administration and evaluation of the program. Of the remaining $71.4 million, 10 percent ($7.14 million) was reserved for making grants to private nonprofit agencies and public agencies other than school districts, as required by the regulations, and $64.26 million was reserved for making grants to school districts.

The first grant under ESAP--made to the Jackson, Mississippi, school district in the amount of $1.3 million--was approved by the Acting Commissioner of Education on August 27, 1970. By November 13, 1970, 793 grants totaling over $55 million were reported by the Office of Education as having been made. The following table, prepared from HEW reports, shows a breakdown by each regional office of the number and amount of these grants. A further breakdown by State of the number and amount of these grants is shown in appendix II.

HEW region	Number of grants made	Percent of total grants	Amount of grants	Percent of total amount of grants
Region I--Boston	-	-	$ -	-
" II--New York	1	0.1	45,000	0.1
" III--Philadelphia	59	7.5	4,696,253	8.5
" IV--Atlanta	530	66.8	36,194,038	65.2
" V--Chicago	-	-	-	-
" VI--Dallas-Fort Worth	200	25.2	14,324,921	25.8
" VII--Kansas City	1	0.1	57,385	0.1
" VIII--Denver	-	-	-	-
" IX--San Francisco	2	0.3	189,938	0.3
" X--Seattle	-	-	-	-
Total	793	100.0	$55,507,535	100.0

Most of the Federal funds provided have been for the purpose of carrying out special curriculum revisions and teacher-training programs. These two activities account for nearly 50 percent of the funds granted. The table below shows a breakdown by program activity of the funds granted as of November 13, 1970, as reported by HEW.

Program activity	Amount granted	Percent of total
Teacher preparation programs	$13,340,250	24.0
Special curriculum revisions	12,603,730	22.7
" pupil personnel services	9,708,309	17.5
" comprehensive planning	8,360,524	15.1
" community programs	6,022,536	10.9
" student-to-student programs	1,673,226	3.0
Other	3,798,960	6.8
Total	$55,507,535	100.0

BASIS FOR SELECTION OF GRANTS TO BE REVIEWED

In accordance with the Committee's request, we selected 50 grants for examination. As a basis for distribution of the 50 grants among the HEW regions and the States within these regions, we considered the ratio of (1) the number of grants in each HEW regional office to the total number of grants in all regions and (2) the number of grants in each State within a region to the total number of grants in all the States within that region.

Our selection then was made from an HEW report showing the grants to school districts as of November 13, 1970, after having applied the following criteria.

--All grants of $1 million or more would be selected.

--At least two grants in each State would be selected. (If the State had received only one or two grants, we would select all grants.)

--All other grants would be selected at random. (Within each State the grants were listed from high to low dollar amounts so that we would select a mix of both.)

The 50 grants selected totaled about $14 million, or about 25 percent of the approximately $55 million that had been reported as granted to 793 school districts as of November 13, 1970. The following table shows, by HEW regional office, the total number and amount of grants made and those selected for our review. A further breakdown by State and school district of the 50 grants selected for review is shown in appendix III.

HEW region	Total grants reported as of November 13, 1970 Number	Amount	Grants selected for our review Number	Amount
Region I--Boston	-	$ -	-	$ -
" II--New York	1[a]	45,000	-	-
" III--Philadelphia	59	4,696,253	7	1,103,821
" IV--Atlanta	530	36,194,038	28	7,323,346
" V--Chicago	-	-	-	-
" VI--Dallas-Fort Worth	200	14,324,921	12	5,384,645
" VII--Kansas City	1	57,385	1	57,385
" VIII--Denver	-	-	-	-
" IX--San Francisco	2	189,938	2	189,938
" X--Seattle	-	-	-	-
Total	793	$55,507,535	50	$14,059,135

[a]This grant made to the Virgin Islands was excluded in making our selection.

CHAPTER 2

MAJOR PROGRAM REQUIREMENTS

PRIORITIES IN APPROVAL OF APPLICATIONS

The ESAP regulations provide that financial assistance be made available to eligible school districts only to meet special needs resulting from the elimination of racial segregation and discrimination among students and faculty in elementary and secondary schools by contributing to the costs of new or expanded activities designed to achieve successful desegregation and to eliminate discrimination. The regulations require that the Commissioner of Education, in determining whether to provide assistance under ESAP or in fixing the amount thereof, consider such criteria as he deems pertinent, including

--the applicant's relative need for assistance,

--the relative promise of the project in carrying out the purpose of ESAP,

--the extent to which the proposed project deals comprehensively and effectively with problems faced by the school district in achieving and maintaining a desegregated school system, and

--the amount available for assistance under ESAP in relation to the applications pending.

The regulations provide that the Commissioner of Education not approve an application for assistance under ESAP without first affording the appropriate State educational agency a reasonable opportunity to review the application and to make recommendations on it.

AUTHORIZED ACTIVITIES UNDER PROGRAM

The regulations require that projects assisted under ESAP be designed to contribute to achieving and maintaining desegregated school systems and emphasize the carrying out of such activities as

--special community programs designed to assist school systems in implementing desegregation plans,

--special pupil personnel services designed to assist in maintaining quality education during the desegregation process,

--special curriculum revision programs and special teacher preparation programs required to meet the needs of a desegregated student body,

--special student-to-student programs designed to assist students in opening up channels of communication concerning problems resulting from desegregation, and

--special comprehensive planning and logistic support designed to assist in implementing a desegregation plan.

PROJECT APPLICATION REQUIREMENTS

The regulations require that a school district's application for ESAP funds set forth a comprehensive statement of the problems faced by the district in achieving and maintaining a desegregated school system, including a comprehensive assessment of the needs of the children in the system, and describe one or more activities that are designed to comprehensively and effectively meet such problems with the ESAP funds requested. The application also is to include a description of the methods, procedures, and objective criteria to be used by an independent organization to evaluate the effectiveness of each program activity for which funds are being requested.

In addition, the regulations include requirements that a school district give formal assurances, which are contained in the ESAP application form, that

--it will use the ESAP funds made available only to supplement, not to supplant, funds which were available to it from non-Federal sources for purposes which meet the requirements of the program;

--it will make a reasonable effort to utilize other Federal funds available to meet the needs of children;

--it has not engaged and will not engage in the transfer of property or services to any nonpublic school or school system which, at the time of such transfer, practices racial discrimination;

--it will not discriminate in the hiring, assigning, promoting, paying, demoting, or dismissing of teachers and other professional staff who work directly with children or who work on the administrative level on the basis of their being members of minority groups;

--it will ensure that the assignment of teachers and other staff who work directly with children will be made so that the ratio of minority to nonminority teachers and staff in each school is substantially the same as the ratio in the entire school system;

--it will not employ any discriminatory practices or procedures, including testing, in the assignment of children to classes or in carrying out other school activities; and

--it will have published in a local newspaper of general circulation the terms and provisions of the approved project within 30 days of such approval.

COMMUNITY AND STUDENT PARTICIPATION IN PROGRAM

The regulations provide for the interests of the community to be considered by the school districts in the formulation and administration of

their ESAP projects by requiring that biracial and student advisory committees participate in ESAP.

Each school district receiving an ESAP grant is required to establish a biracial advisory committee if no biracial committee has been formed by the district pursuant to a Federal or State court desegregation order. If a biracial committee has been formed under a court order, the committee is to be given a period of 5 days to review and comment to the school district on its ESAP application before the application is submitted to the Office of Education for approval.

If no biracial committee has been formed pursuant to a court order, the school district is to select at least five but not more than 15 organizations which, in the aggregate, are broadly representative of the minority and nonminority communities to be served. The names of the organizations selected are to be submitted with the district's application. Each organization selected may appoint one member to an advisory committee, and the school district is then to appoint such additional members from the community as may be needed to establish a committee composed of equal numbers of minority and nonminority members, at least one half of whom are to be parents whose children will be directly affected by the district's ESAP project. The biracial advisory committee is to be established within 30 days of approval of the district's application.

The school district is to make public the names of members appointed to the biracial advisory committee. It also is to consult with the committee with respect to policy matters arising in the administration and operation of the ESAP project and to give the committee a reasonable opportunity to observe and comment on all project-related activities.

In addition to submitting other assurances required by the regulations, a school district must submit with its application an assurance that, promptly following the opening of the 1970-71 school year, a student advisory committee will be formed in each secondary school affected by the project which has a student body composed of minority and nonminority group children. The number of minority and nonminority students serving on each such committee is to be equal, and the members are to be selected by the student body. The school district is to consult with the student advisory committee with respect to carrying out the project and establishing standards, regulations, and requirements regarding student activities and affairs.

CHAPTER 3

CONCLUSIONS ON REVIEW OF HEW POLICIES AND PROCEDURES FOR APPROVING GRANTS UNDER ESAP

We believe that, in many cases, school districts did not submit with their applications, nor did HEW regional offices obtain by other means, sufficient information to enable a proper determination that the grants were made in accordance with the ESAP regulations or that the grants were in line with the purpose of the program.

Most of the applications did not contain, as required by the regulations, comprehensive statements of the problems faced in achieving and maintaining desegregated school systems, nor did they contain adequate descriptions of the proposed activities designed to comprehensively and effectively meet such problems. Particularly, there was a lack of documentation as to how the proposed activities would meet the special needs of the children incident to the elimination of racial segregation and discrimination in the schools.

Therefore we believe that the applications in many cases did not provide HEW with an adequate means for determining that project approvals were based upon consideration of such factors as the applicants' needs for assistance, the relative potential of the projects, or the extent to which the projects dealt with the problems faced by the school districts in desegregating their schools.

The files supporting most of the grants reviewed did not evidence full compliance by the school districts with the regulations concerning the formation of biracial and student advisory committees. Also, most of the applications did not contain, contrary to the regulations, adequate descriptions of the methods, procedures, or objective criteria that could be used by an independent organization to evaluate the effectiveness of each project.

Officials in HEW's Atlanta Regional Office, which made 28 of the 50 grants that we reviewed, told us that they generally did not have detailed information beyond that in the project files concerning the program activities set forth in the applications. Some said that they did not have time, prior to grant approval, to seek additional information. They said that they had to rely on school district officials to identify the major problems which the districts faced in desegregating their schools and to propose programs which the officials believed would effectively deal with those problems.

Officials in HEW's Dallas Regional Office, which made 12 of the grants reviewed, agreed, in general, that many of the applications did not contain adequate statements of the problems or descriptions of the activities designed to meet these problems. Officials in both the Dallas and Philadelphia Regional Offices--the Philadelphia office made seven of the grants reviewed--told us that they had satisfied themselves with respect to the merits of the projects, prior to project approval, on the basis of their knowledge of the school districts' problems and of their contacts with

school officials to obtain additional information as considered necessary. There was an almost complete lack of documentation in the files with respect to the additional information that was known to or obtained by, these regional officials on the basis of which they had determined that the projects merited approval.

In the Kansas City and San Francisco Regional Offices which approved a total of three applications, the applications seemed to have provided sufficient information to enable regional officials to determine that the proposed activities were in line with the purposes of ESAP.

We believe that HEW should have questioned, prior to grant approval, the following situations noted during our review.

--One school district appeared to have been ineligible to participate in ESAP because it had entered the terminal phase of its desegregation plan prior to the time period specified in the regulations for eligibility. After we brought the situation to the attention of HEW officials, payments under the grant were suspended, pending a final determination of eligibility. (See p. 20.)

--Information pertaining to another school district indicated that ESAP funds may have been used, contrary to regulations, to supplant non-Federal funds available to the district prior to its grant. (See p. 37.)

--Information in the regional files at the time that one district's application was reviewed showed that the ratio of minority to nonminority faculty in each school within the district was not substantially the same as the ratio for the entire school system, contrary to the regulations. (See p. 59.)

We noted another case in which information that had become available after the grant was made indicated that ESAP funds may have been used to supplant non-Federal funds otherwise available to the school district. For this case, as well as for the other noted above, we plan to examine into whether ESAP funds were used to supplant non-Federal funds. (See p. 37.)

In our opinion, the weaknesses that we observed in the HEW procedures and practices were due, to a large degree, to HEW's policy of emphasizing the emergency nature of ESAP and to its desire for expeditious funding, at the expense of a more thorough review and evaluation of the school districts' applications, particularly as to the adequacy of described program activities in satisfying ESAP requirements.

We believe that, to overcome the weaknesses in the HEW grant approval procedures, HEW should undertake a strong monitoring program to help ensure that the grant funds already made available to the school districts are being used solely for ESAP purposes and not for educational assistance in general. We recognize that postgrant reviews at certain grantee school districts are being made by HEW regional officials.

NEED TO STRENGTHEN GRANT APPROVAL PROCEDURES

We believe that, in the event additional Federal funding is authorized for similar assistance to school districts to defray the costs of meeting special problems arising from the desegregation of elementary and secondary schools, HEW should strengthen its procedures for approval of grants to school districts. Such action should:

--Provide sufficient time for regional officials to make a thorough review and evaluation of each application received so that approval will be based on an understanding of the problems faced in achieving and maintaining a desegregated school system and on an adequate determination that the proposed activities are designed to meet such problems.

--Require that all information relied upon in approving school district applications, whether obtained orally or in writing, be made a matter of record so that the basis upon which grant approvals are made will be readily available to HEW program managers or to others authorized to review the conduct of the program.

--Provide for an effective monitoring system to help ensure that (1) grant funds made available to the school districts are being used for the purposes specified in their applications and (2) the school districts are complying with HEW regulations on nondiscrimination as well as with the other assurances given in their applications.

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The results of our work at the five HEW regional offices, which served as the basis for our overall conclusions, are discussed in the following chapters.

CHAPTER 4

COMMENTS ON HEW ATLANTA REGIONAL OFFICE PROCEDURES FOR APPROVING GRANTS UNDER ESAP

HEW Region IV, with headquarters in Atlanta, Georgia, encompasses the eight States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. According to Office of Education statistics, 1,110 school districts were operating public schools in these States in the fall of 1969. As of August 26, 1970, 773 school districts were identified by HEW as being potentially eligible for assistance under ESAP. Of these 773 school districts, 530 had received grants totaling over $36 million as of November 13, 1970. Our review included 28 of these grants totaling about $7.3 million. (See app. III.)

We believe that the HEW Atlanta Regional Office did not require the school districts to comply with several pertinent requirements of the ESAP regulations. The applications for grants generally did not contain sufficient information to enable HEW to properly determine whether project approvals by HEW Region IV had been based upon consideration, as required by the regulations, of such factors as the applicants' needs for assistance, the relative promise of the projects, and the actual problems faced by the school districts in desegregating their schools. Program officers who reviewed the applications told us that they generally did not have detailed information concerning the subject matter of the applications and did not have time to seek additional information. They said that they had to rely on school district officials to identify the major problems which the districts faced in desegregating their schools and to propose programs which they believed would effectively deal with those problems.

A major factor in the approval of most of the applications which we reviewed appeared to have been a priority ranking of school districts that had been prepared by the HEW headquarters office. (See p. 23.) The priority ranking was used in the HEW regional office to establish the funding level for each school district. We were told by regional officials that these funding levels were intended for use only as control devices to preclude premature depletion of the funds allotted to each State and that the amounts of grants were based upon analyses of the needs documented by the districts. As previously pointed out, however, we noted a general lack of such documentation in the regional files.

Many of the applications reviewed did not describe the proposed program activities in such ways as to provide reasonably clear indications of the purposes for which grant funds would be spent, and the reviewing program officers did not always have what we considered adequate supplementary information in this regard. As a result, a proper determination could not be made, in our opinion, on the basis of the information available within HEW that these grants were for the purposes intended by ESAP--especially with regard to the use of program funds to meet special needs incident to desegregation of the schools.

Most of the applications, in our opinion, did not contain, contrary to the regulations, adequate descriptions of the methods, procedures, and objective criteria that could be used by an independent organization to evaluate the effectiveness of each program activity. Also the files supporting most of the 28 grants did not evidence full compliance by the districts with the regulations concerning the formation of biracial and student advisory committees and the publication of the terms and provisions of the ESAP projects.

Regional officials told us that they had accepted, in the absence of indications to the contrary, the assurances of the school districts that they were not (1) discriminating on the basis of race in teacher and professional staffing patterns, (2) assigning children to classes on the basis of their being members of minority groups, or (3) engaging in the transfer of property or services to any nonpublic school or school system which practiced racial discrimination.

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ELIGIBILITY AND FUNDING OF SCHOOL DISTRICTS

Eligibility of school districts

In general, the procedures followed in Region IV for determining the eligibility of applicant school districts were satisfactory. For a few cases in which complaints had been received indicating possible noncompliance with title VI of the Civil Rights Act of 1964, we were informed by Office for Civil Rights officials in Washington that, pending final resolution of such complaints, the benefit of the doubt had been given to the applicant districts in all cases and funding had not been held up.

To allot ESAP funds to the eight States in Region IV, HEW/Washington determined that there were a total of 773 potentially eligible school districts in the region as of August 26, 1970. On the basis of the 2,130,717 minority students in these 773 potentially eligible school districts, the Office of Education, through the use of the formula previously described on page 7, allotted over $39 million to school districts in these States, as set forth below.

State	Number of potentially eligible school districts	Number of minority students	State allotment
Alabama	110	273,274	$ 5,095,008
Florida	64	392,965	7,326,565
Georgia	168	366,648	6,835,902
Kentucky	7	15,021	280,057
Mississippi	149	274,412	5,116,225
North Carolina	125	371,247	6,921,648
South Carolina	92	262,584	4,895,700
Tennessee	58	174,566	3,254,665
Total	773	2,130,717	$39,725,770

The regulations require that a school district, to be eligible for ESAP assistance, must have commenced the terminal phase of its voluntary or court-ordered desegregation plan during the 1968-69, 1969-70, or 1970-71 school year.

Regional officials told us that, at the beginning of ESAP, the Division of Equal Educational Opportunities in Washington had sent Region IV a listing of all potentially eligible school districts in the region and had requested that the list be checked with the regional Office for Civil Rights to determine whether any of the districts were considered to be ineligible to participate in ESAP. These officials said that no record had been kept in the region of the results of this work. An official of the Division of Equal Educational Opportunities in Washington told us that a revised listing of potentially eligible school districts subsequently had been sent to the regions that took into consideration the information provided by Region IV. This listing showed, for each eligible district, the total number of students, the number of minority students, and a numerical priority rating.

To initiate ESAP, a number of conferences were held in the various States between representatives of HEW, the State school offices, and the school districts. The HEW senior program officer said that the State school offices had selected the school districts whose representatives had attended these conferences.

Determinations of school district eligibility in Region IV were made either by officials of the regional Office for Civil Rights or by officials of the HEW Office of General Counsel who were detailed to the region. Regional officials told us that Region IV, Office for Civil Rights determinations had consisted of (1) verifying that a copy of the court order or voluntary plan accompanied the application, (2) checking against available Office for Civil Rights records to determine whether the applicant was considered to be in compliance with the nondiscrimination requirements of title VI of the Civil Rights Act of 1964 and had entered the terminal phase of its desegregation plan within the time limitations stated in the regulations, and (3) reviewing the assurances in the application to verify that they had been signed and that they had not been altered. Of the 28 school districts included in our review, 19 were operating under court-ordered desegregation plans and nine were operating under voluntary desegregation plans.

We reviewed the regional Office for Civil Rights files to determine whether there were any records of complaints against the school districts included in our review that would indicate that the districts were not in compliance with title VI of the Civil Rights Act of 1964.

We were told that the Office for Civil Rights was not responsible for investigating complaints against school districts which had desegregated pursuant to court orders and that any complaints received against such districts were forwarded to the Department of Justice for its consideration. We noted that the region had received complaints against two court-ordered districts included in our review after the date of the most recent court orders but before approval of the ESAP grants. These complaints had been forwarded to the Department of Justice. In addition, there were complaints against two other court-ordered districts, but neither the dates of receipt of the complaints nor the dates of their transmissions to the Department of Justice were shown in the regional files.

Regional officials told us that the Office for Civil Rights had responsibility for investigating complaints against districts which were desegregating under voluntary plans. Regional files contained a record of complaints against two of these districts included in our review--Dillon County School District No. 2, South Carolina, and Columbus County School District, North Carolina.

Indications of possible noncompliance by school districts with the eligibility requirements of ESAP are discussed below.

Apparently ineligible district approved for ESAP grant

The regional files did not contain a copy of the desegregation plan for Jefferson County School District, Kentucky. Information in the file,

however, indicated that Jefferson County had completely desegregated its schools in 1965 using geographic attendance zones and that the county had not made any subsequent changes in the district's plan. According to ESAP regulations, school districts which had entered the terminal phase of their desegregation plans prior to the 1968-69 school year were not eligible for ESAP grants.

In 1968 HEW had questioned the compliance status of the district, because the attendance zones drawn by the district produced one essentially all-black school. The district justified the existence of the all-black school to the satisfaction of HEW, and in February 1969 HEW wrote to the school district advising it that "the present plan [1965] of desegregation satisfies the provisions of Title VI of the Civil Rights Act of 1964."

After we brought this case to the attention of HEW officials, they agreed that the information available indicated that the district had entered the terminal phase of its desegregation plan before the 1968-69 school year and therefore apparently was not eligible to participate in ESAP. Payments on the grant were suspended pending a final determination of eligibility.

Complaint against grantee school district on teacher discrimination upheld by Department of Justice

Regional Office for Civil Rights records pertaining to Talladega County, Alabama, contained notes indicating that, on October 13, 1970, Department of Justice advice was being obtained on "an NEA [National Education Association] teacher firing motion," and that, on November 4, 1970, the county superintendent of schools assured the region that there was no discrimination against teachers in the county. The ESAP grant to Talladega County was approved on November 5, 1970, in the amount of $168,247. As of January 17, 1971, $48,338 in grant funds had been advanced to the Talladega County School District.

Department of Justice officials told us that in September 1970 they had received two complaints (from sources other than HEW) concerning the firing of teachers in Talladega County. Subsequent investigation by the Department of Justice indicated that the complaints were justified, and on January 8, 1971, after the ESAP grant was approved, a court order was filed requiring reinstatement of the dismissed teachers. At the time of our review, the regional Office for Civil Rights had not made a postgrant review at the Talladega County School District to determine whether the district had complied with the court order.

Inquiry concerning downgrading of black principals

On August 24, 1970, HEW received an unsigned inquiry from a student concerning the downgrading of black principals in Dillon School District No. 2, South Carolina. HEW/Washington forwarded the letter to the Region IV Office for Civil Rights on August 28, 1970. The letter was received in the region on September 2, 1970--1 day prior to approval of the district's ESAP application. There was no indication in the regional files

that the letter had been considered during the review of the district's application or that regional officials had been aware of the letter at that time.

On September 24, 1970, regional Office for Civil Rights personnel made a postgrant visit to this school district. As a result of the visit, the regional Office for Civil Rights wrote to the superintendent of the Dillon school district on December 3, 1970, reminding him that the district had not submitted to HEW the job descriptions for the newly created positions of coprincipals in the school system. Also the letter stated that the black coprincipals appeared to be subordinate to the white coprincipals. Therefore the school district was requested to submit the job descriptions of the coprincipals so that a determination could be made as to whether the school district was in compliance with the Civil Rights Act of 1964.

Indication of discrimination in assignment of students

We noted a complaint against Columbus County School District, North Carolina, involving the acceptance of students from a neighboring school district. An HEW Office of General Counsel official informed us that white students were leaving certain schools in the neighboring county, which was under a Federal court order to desegregate, and attending schools in Columbus County which was operating under a voluntary desegregation plan. On October 22, 1970, the regional Office for Civil Rights advised the superintendent of Columbus County schools that this practice was not acceptable because it was contrary to the nondiscrimination requirements of title VI of the Civil Rights Act of 1964. The superintendent was requested to furnish written assurance that the practice would be discontinued. On October 29, 1970, the superintendent advised Region IV that the students would be reassigned to their school district of residence.

Funding of school districts

A major factor in determining the amount of ESAP grants made to school districts appeared to have been a priority ranking of eligible districts that was established by HEW/Washington and used by Region IV to establish funding levels for each district.

The Office of Education, Washington, established a system for determining the priority ranking of school districts eligible to receive ESAP funds. A letter dated August 24, 1970, from the Director for Education Planning, Office of Assistant Secretary for Planning and Evaluation, to the Acting Commissioner of Education pointed out that in July 1970 the Secretary of HEW had clearly stated that the purpose of ESAP was to fund quality desegregation projects in the school districts where the need was greatest and where the chances of cooperation were best. This letter also stated that two factors would determine the final decision on whether or not a district would receive funds:

--The quality of the comprehensive desegregation plan.

--The priority ranking of the district, determined by factors which combined an estimate of need and compliance probability.

The letter stated also that the Commissioner, meeting with the Advisory Committee on Desegregation, had decided on the following four factors as the determinants of each district's priority ranking.

1. Percent of minority enrollment.

2. Effective date for terminal desegregation.

3. Assessment by the Office for Civil Rights of the likelihood of cooperation and success in the eligible district based on record of past compliance.

4. Proportion of students within a district reassigned as a result of the desegregation plan.

Under the priority-ranking system that was established, points were given for each of the above factors--three points being the highest score and one point being the lowest score for each factor. Thus the highest priority districts would have scores of 12 and the lowest districts scores of four on the combined factors.

Using this priority ranking, regional office officials established a funding level for each school district by multiplying the number of minority students in the district by $28, $18, or $10, depending upon the numerical rating assigned. If the numerical rating was between 10 and 12, the school district's funding level was computed on the basis of $28 for each minority student; if the rating was between 7 and 9, $18 was used; and if the rating was between 4 and 6, $10 was used. HEW officials could not tell us the source of the $28, $18, and $10 figures or how these figures had been determined. The HEW regional senior program officer told us that the

funding levels were intended to be used only as an internal control to ensure that no one district would materially deplete the funds allotted to a State.

The HEW senior program officer also said that the amounts granted to districts were determined by the program officers on the basis of their analyses of the needs documented by the districts. The files which we examined, however, did not, in our judgment, contain adequately documented needs or evidence of the type of analyses made by program officers that would permit them to determine the applicants' needs for ESAP funds. Some program officers told us that the time available to them for reviewing applications had not permitted in-depth reviews, but others said that applications and proposed programs had been discussed with school district officials by telephone. In most cases, the program officers had not made records of these discussions and they could not recall specifics of the discussions. When records had been made, they generally related to changes necessary to bring proposed programs in line with the established funding levels.

The initial grants to 20 of the 28 school districts included in our review were within 5 percent of the established funding levels--within 2 percent in 16 cases. In 17 cases the grants were for lesser amounts than those requested in the applications, and in 11 of those cases the grants were within 1 percent of the established funding levels. We noted no funding pattern in relation to the funding levels in the other eight grants we reviewed.

A comparison of the established funding levels with the amounts requested by the school districts and the amounts initially granted by Region IV for the 28 districts included in our review follows.

School district	Funding level established by HEW Region IV	Amount requested by school district	Amount of ESAP grant
Alabama:			
Phenix City	$ 74,312	$ 215,588	$ 74,312
Sylacauga	27,468	54,500	27,468
Talladega County	111,916	168,247	168,247
Florida:			
Dade County	1,922,256	2,966,606	1,921,905[a]
Madison County	57,596	50,000	50,000
Wakulla County	9,414	308,314	9,000
Georgia:			
Appling County	17,946	18,313	18,313[b]
Atlanta	1,266,228	1,150,989	1,150,989
Bacon County	6,048	6,000	6,000
Carroll County	30,654	16,000	28,800
Crisp County	68,292	65,925	65,925
Montgomery County	12,690	13,000	13,000
Wilkenson County	26,658	18,000	22,000
Kentucky:			
Jefferson County	32,710	62,480	32,700
Fulton County	4,430	46,595	4,430
Mississippi:			
Harrison County	43,830	80,217	43,000
Hinds County	196,672	190,000	190,000
Houston	14,976	200,000	20,000
Jackson Municipal Separate	330,858	1,300,000	1,300,000
North Carolina:			
Columbus County	118,944	143,258	118,900
Hoke County	89,264	90,240	89,240
Tarboro	44,212	60,732	43,832
Winston-Salem City/ Forsyth County	250,938	390,441	250,738
South Carolina:			
Dillon County No. 2	71,000	100,000	75,000
Greenville County	232,434	696,076	232,188[c]
Orangeburg County No. 7	25,816	39,068	25,568
Tennessee:			
Maury City	1,484	16,500	1,500
Memphis	2,083,564	2,083,564	992,531

[a]Grant subsequently increased to $2,121,905

[b]Grant subsequently increased to $ 38,313

[c]Grant subsequently increased to $ 359,998

PROJECT POTENTIAL AND CONTENT

In our opinion, 25 of the 28 applications included in our review did not contain, contrary to the regulations, comprehensive statements of the problems faced in achieving and maintaining desegregated school systems or adequate descriptions of the proposed activities designed to effectively meet such problems. In addition, the applications did not adequately explain how the proposed activities would meet the special needs of the children incident to the elimination of racial segregation and discrimination in the schools. In only a few cases did the applications show the basis for the dollar amounts requested for the proposed activities. Therefore we believe that the applications, in general, did not provide HEW with an adequate means for determining that ESAP funding decisions had been based on a consideration of the applicants' needs for assistance, the relative potential of the projects, or the extent to which the projects dealt with the actual problems faced by the school districts in desegregating their schools.

We discussed the applications with the program officers who had reviewed them and recommended their approval, to determine whether any additional information concerning the subject matter of the applications was available to them that would support or justify their approval actions. In a few cases, the program officers said that they had been familiar with the situations in the districts or that their experience had provided them with bases for judging the appropriateness of the amounts requested. In most cases, however, the program officers said that they had no additional information concerning the subject matter of the applications but that they had to rely upon local school officials to identify the problems which they were facing in desegregating their schools and to propose programs which would effectively deal with those problems.

The HEW senior program officer told us that the Office of Education had instructed the regional offices, during the early stages of the program, to complete the review and either approve or disapprove the applications within 36 hours of their receipt. Of the 28 applications which we reviewed, 15 had not been approved within the specified time period, but there was ample indication that the processing and approval of applications had been handled on a crash basis.

Following are some examples of applications which, in our opinion, contained inadequate information as to (1) the existence of special needs incident to desegregation of the schools, (2) the nature and scope of proposed activities designed to meet such needs, (3) the relationship of the proposed activities to the special needs of the children, or (4) the basis for the amount of the grant.

Jackson Municipal Separate School District
Jackson, Mississippi

The Jackson Municipal Separate School District applied for and received an ESAP grant of $1.3 million. The budget outline supporting the grant showed that funds were requested for the following general program activities.

Special community programs	$ 103,000
Special curriculum revision programs	676,400
Teacher preparation programs	449,900
Other	70,700
Total	$1,300,000

The application did not contain a narrative statement justifying the $70,700 under the category "Other" but did contain narrative statements under two other categories--Special Student-to-Student Programs and Special Comprehensive Planning and Logistical Support--for which no funds were shown in the budget outline.

Although the general types of programs listed in the Jackson application, as indicated above, are proper for funding under ESAP, we believe that the application did not contain sufficient information to (1) show, in most areas, the existence of special needs incident to the elimination of racial segregation and discrimination among students and faculty, (2) permit a determination that the proposed program activities were related to the problems identified in the application, and (3) provide a basis for evaluating the reasonableness of the amount of the grant.

The "special curriculum revision programs" section of the Jackson application, shown below, is illustrative of the inadequacies in the application.

"SPECIAL CURRICULUM REVISION PROGRAMS

"NEW AND VARIED INSTRUCTIONAL TECHNIQUES AND MATERIALS TO SERVE CHILDREN FROM DIFFERENT ETHNIC AND CULTURAL BACKGROUNDS.

"Problems - Providing each pupil with basic skills of communication and computation as a means of continued learning. (3R's) Assisting pupils with skills to compete effectively and acceptably in a free enterprise society is a specific problem.

"Needs - Needs are the same as the problems.

"NEW TECHNIQUES AND MATERIALS FOR IMPROVED EVALUATION OF STUDENT PROGRESS

"Problems - Changing from a typical lecture, "say-and-do" type of instruction to many techniques that incorporate self-evaluation, discovery, peer-to-peer, etc., to redirect a reservoir of information and materials.

"Needs - The needs for a change in direction to accomplish goals of current everyday living.

"SPECIAL DEMONSTRATION PROJECTS TO INTRODUCE INNOVATIVE INSTRUCTIONAL METHODOLOGIES FOR IMPROVING QUALITY

"Problems - To introduce newer techniques, materials, methods of accomplishment, more effective staff utilization in such techniques as team teaching, differentiated scheduling, aides, flexible scheduling modular scheduling, etc. beginning in selected schools as need is indicated and moving to all schools through plan development.

"Needs - The needs are to redirect instruction to accomplish the above through varied staff approaches and pupil orientation."

The only part of the project description which dealt with the proposed program activity is quoted in its entirety below. The remainder of the description consisted of statements concerning school desegregation in general, fully one half of it quoting a statement by the President as recorded in the Congressional Record for March 24, 1970.

"A program of education redevelopment is essential. It is proposed that the program include five major areas of redevelopment. The initial steps will be "action programs" accompanied by long-range planning. The five major areas of redevelopment are:

"(1) Professional redevelopment of the school system staff to implement immediate innovations and initiate the planning for a continuous program of professional growth.

"(2) Curriculum redevelopment to plan and implement a broader, more relevant, and more flexible curriculum that will meet the identified needs of all pupils.

"(3) Internal management and support redevelopment of the school system operation necessary for effectively planning and carrying out a defined educational program.

"(4) Redevelopment and utilization of community resources so that the improving instructional program can more effectively involve the total community and more efficiently accomplish defined performance objectives.

"(5) Development of a system for continued development and accountability of the total educational system so that innovation can be evaluated and change made economically and efficiently."

The program officer told us that his work on the ESAP application was his first experience with the Jackson school district. He said that, most of his work on the application, aside from eliminating hardware items, had consisted of rearranging the district's earlier proposal so that it would be compatible with the ESAP application form. In response to our questions as to what the specific purposes of the project were and how those purposes were related to special needs incident to the elimination of racial segregation and discrimination among students and faculty, the program officer stated that the biggest problem facing the school district was keeping white

children in the public schools, that the primary purpose of the project was to assist teachers in dealing with a wider range of achievement levels, that the school district needed any help it could get, and that any help the district received would be worthwhile. He could not supply more specific answers.

Concerning the approval of the grant made to the Jackson school district, we noted that the project file contained a copy of a telegram dated August 27, 1970, from the Acting Commissioner of Education to the Superintendent of the Jackson Public Schools advising him that the application for $1.3 million had been approved. The ESAP application, however, was not formally received in Region IV until August 31, 1970. On that day the application was reviewed and approved.

The project file also contained reference to a previous application for $3,764,240. In response to our questions concerning the previous application and the telegram from Washington approving the application for $1.3 million before it was received in the HEW regional office, the program officer for Mississippi related to us essentially the following information.

--Several months before ESAP was approved, Jackson school officials had prepared and taken to Washington an application for about $3.76 million in emergency school assistance funds. After funds for ESAP were approved at only one half of the amount requested by the President, Jackson school officials were informed that their application for $3.76 million could not be approved because of limitations on available funds, and the regional program officer was sent to Jackson to work with local officials to reduce their application to an amount more compatible with the amount of ESAP funds available for the State.

--By eliminating all proposed hardware purchases from the $3.76 million application, the program was reduced to about $700,000, and this information was telephoned to the Deputy Director, Division of Equal Educational Opportunities, Office of Education, Washington. On August 26, 1970, the deputy director telephoned the program officer and told him that Jackson was to be funded for $1.3 million and that an ESAP application should be prepared for that amount.

We also discussed this matter with the Director and the Deputy Director, Division of Equal Educational Opportunities, who provided us with the following additional information.

--After the program officer determined that elimination of hardware items would reduce the Jackson program to about $700,000, the Director and Deputy Director met with the then-Acting Commissioner of Education and it was decided that, since the objective of the Jackson program was to get the schools open without violence, Jackson should be funded for $1.3 million to relieve racial tension. The circumstances surrounding this decision, as related to us, were:

1. The district had received four desegregation court orders in 13 weeks.

2. Even though the schools were open, more than 8,000 students were boycotting classes.

3. More and more white students were going to private schools.

4. The superintendent of schools was resigning.

5. The biracial committee had decided to disband.

6. There had been incidents of violence at Jackson State University.

--The difference between the $1.3 million that was granted and the $700,000 that resulted from elimination of hardware items from the initial proposal (which they said was never formally submitted to HEW) was intended to cover the cost of expanding a computer-assisted instructional program to a number of schools which were being desegregated for the first time.

--Jackson was considered to be a pivotal district in the peaceful desegration of Mississippi schools, and, to ensure peaceful desegregation of the schools in Jackson, HEW considered it essential to demonstrate that quality education was to be made available in previously all-black schools.

Board of Education, Memphis City Schools,
Memphis, Tennessee

The Board of Education, Memphis City Schools, initially requested $2,083,564, which was the funding level established by Region IV for the Memphis district. The amount granted was $992,531. The general activities and related amounts covered by the initial request and the grant were as follows:

Activity	Initial request	Amount granted
Special community programs	$ 283,466	$189,161
Special pupil personnel services	703,279	310,822
Special curriculum revision programs	395,102	153,657
Teacher preparation programs	241,190	21,240
Special student-to-student programs	187,800	90,500
Special comprehensive planning	109,559	101,127
Other	163,168	126,024
Total	$2,083,564	$992,531

The HEW program officer for Tennessee told us that, at the workshop session prior to the filing of the application, an HEW official assisted the district in preparing an application which would approximate the amount of the established funding level for the district. The HEW program officer said that she later had been told that Memphis' project could not be funded for the amount requested, that she had assisted the district in revising the project description, but that she had not been concerned with the amount shown for each activity. She said that her only concern with the budget had been to keep the total amount within the revised ceiling and that the revised amounts requested by Memphis for the various activities had been established by the school district.

The initial application was received in Region IV on September 25, 1970. On September 28, 1970, it was reviewed by three program officers, each of whom recommended funding at $992,531. Final approval was delayed until November 12, 1970, principally because of a question concerning the district's compliance with title VI of the Civil Rights Act of 1964.

In our opinion, the project file lacked information showing how the grant funds were to be used to meet special needs incident to the elimination of racial segregation and discrimination among students and faculty. Illustrative of such inadequacies are the following excerpts from the application.

Employment of
secondary guidance counselors
and secondary counselor aides

The district set forth the following problem in the area of providing guidance counselors in the secondary schools.

> "There is in our increasingly complex society, a great need for more individual counseling and guidance, especially as it relates to vocational exploration, long range educational planning and human relations. The pupil-counselor ratio in the Memphis City Schools is such that this individual attention is sometimes difficult."

To deal with this problem, the district's project provides for employing 11 additional counselors, 22 counselor-aides, and two "area specialists"--one to supervise the counselors and the other to oversee the activities of the counselor-aides--at a total cost of $182,264.

Staffing and maintaining a mobile zoo

Under the program activity "Special Curriculum Revision Programs," the district set forth the following problem.

> "The City of Memphis has a $14,000 Mobile Zoo trailer, with both heating and air conditioning. This new trailer arrived in Memphis at the end of this summer so as to serve only two days in the summer park system programs. The only other vehicle of this type was purchased at the same time for New York City. The Memphis Mobile Zoo is available from the City of Memphis Park Commission with assistance from the Memphis Zoo for use in the Memphis City Schools. The problem is the staffing of the trailer, and maintaining it and a one ton truck to pull the trailer."

To deal with this problem, the district proposed to employ one area specialist, one aide, and one truck driver; to purchase one truck with trailer hitch; to renovate the main cage of the trailer; to acquire domestic and wild animals, and necessary equipment, materials, feed and supplies; and to operate and maintain the mobile zoo, at a total cost of $14,979.

Using the newspaper as an instructional tool

Also under the program activity "Special Curriculum Revision Programs," the district stated the following problem.

> "Many disadvantaged children are 'turned off' by books and other school type materials. On the other hand, teenagers and pre-teens are interested in the world about them. From past experiences, teachers have discovered that students are very much interested in reading the daily newspaper. Newspapers used this year met with tremendous enthusiasm on the part of students."

To deal with this problem the district proposed to purchase "Newspaper Subscriptions @ $0.05 each" at a total cost of $25,000.

The program officer told us that her work on the ESAP application was her first exposure to the Memphis school system. She acknowledged that high student-to-counselor ratios had been experienced by most school systems

and that this problem was not related to elimination of racial segregation and discrimination. She said, however, that the problem was more pronounced in desegregated schools--especially those with high proportions of minority students. The program officer said also that she did not know of any particular problem faced by Memphis that was not common to other desegregated districts having large numbers of minority students. She stated that the mobile zoo would permit black and white children to be exposed to animals and that the newspapers would help to alleviate problems in instructional programs.

In view of the kinds of problems described in the Memphis application, as shown above, and after considering the views of the program officer, we believe that HEW had insufficient information upon which to base a decision that the grant funds were to be used to meet special needs incident to desegregation of the district's schools.

Orangeburg County School District No. 7
Elloree, South Carolina

Orangeburg County School District No. 7 applied for ESAP funds in the amount of $39,068 and received a grant of $25,568.

The budget outlines submitted by the district in its application and revised by HEW were as follows:

Activity	Submitted	Revised
Special pupil personnel services	$12,000	$12,000
Special curriculum revision programs	20,300	6,800
Teacher preparation programs	6,768	6,768
Total	$39,068	$25,568

Information in the project file showed that the application was received in Region IV on September 4, 1970, and that the review and approval process had been completed on the same date.

Under the activity "Special Curriculum Revision Programs," the district outlined a single problem and need as follows:

> "Problem - There is no fully equipped science center in the district. A regular classroom without water or proper lab facilities is all that is available.
>
> "Need - A science laboratory fully equipped for student use with a revised instructional approach is needed to answer this dire need."

The application did not contain any other description of the program which the district proposed to pursue with the $20,300 requested for curriculum revision. The file did not contain any indication of the activity to be funded with the $6,800 provided for curriculum revision.

In our opinion, the project file contained insufficient information to (1) show the existence of a special need incident to the elimination of racial segregation and discrimination among students and faculty and (2) evaluate the reasonableness of the amounts requested or granted.

The uncertainty of the purposes of the grant was demonstrated, we believe, in an exchange of correspondence between the school district superintendent and regional officials. On October 13, 1970, the superintendent wrote to the Office of Education grants officer, saying:

> "Since you only approved $6,500 for building under Special Curriculum Revision, I am asking you to please let me transfer this amount to renovation and repair of existing buildings."

On October 26, 1970, the HEW senior program officer responded to the superintendent's request, saying:

> "After studying this request and the proposal originally approved, this office is unable to grant approval. As you know requests for building changes have a low priority in the ESA Program, and your request does not have sufficient information about the need for this change."

Use of ESAP funds for new construction or for major structural changes to existing buildings is prohibited by the general terms and conditions of the grants.

The Region IV program officer who reviewed the application told us that he thought that the science center could be related to a special need incident to the elimination of racial segregation and discrimination, because curriculum revision was always necessary in all desegregated systems to meet the needs of all students. In response to our question as to the purpose of the amount granted to the district for curriculum revision, the program officer said that he had assumed that the funds would be spent to improve the science curriculum.

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The following examples demonstrate the apparent reliance upon the funding levels in establishing the amounts granted to districts.

Winston-Salem City/Forsyth County
Board of Education
Winston-Salem, North Carolina

In the priority ranking, the Winston-Salem City/Forsyth County Board of Education, was assigned a numerical rating of 9, which meant that its funding level would be determined by multiplying the number of minority students in the district by $18. On this basis the established funding level for the district was $250,938.

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On September 21, 1970, an application was received from the district for $390,441 in ESAP funds. This amount equals the number of minority students in the district multiplied by $28--the amount used in establishing funding levels for districts with a numerical rating between 10 and 12 in the priority ranking.

There was a note in the file, signed by one of the reviewing officials, showing that on September 25, 1970, the program officer had called the school district superintendent to explain that it would be necessary to reduce the district's budget to $250,938. The note showed also that the district previously had been given an incorrect figure as to its funding level.

The district submitted a revised budget outline for $250,738, which was received in Region IV on October 8, 1970, and which was reviewed and approved on October 9, 1970. In transmitting the revised budget the superintendent stated:

> "A reduction of this amount will necessarily affect the level of project services. In fact, the reduction resulted in the complete elimination of Special Pupil Personnel Services. While the other activities described in our project narrative are still intact, they have been cut back appreciably. A comparison of the original budget with the enclosed revised budget shows the degree by which each activity was reduced."

The narrative in the grant application did not indicate the nature of the changes intended in the project activities.

In addition, we noted that the district's application listed a number of problems in the areas of curriculum revision and teacher preparation, such as

--widely divergent levels of student academic performance;

--large number of students deficient in reading and other communication skills;

--instructional and human relations;

--inadequate time for teachers to participate in staff development workshops and other inservice activities; and

--at the high school level, much of the teachers' time must be spent in supervision of study halls.

In response to our inquiry as to how these problems represented special needs incident to the elimination of racial segregation among the students and faculty, the program officer acknowledged that these problems existed apart from the desegregation process but said that desegregation made the problems more pronounced.

Fulton County Board of Education
Hickman, Kentucky

The application of the Fulton County Board of Education for ESAP funds and other documents in the files indicated the existence of serious racial tension in the Fulton County schools, which had culminated in a suit in the Federal courts over the expulsion of eight black students from the high school. The district attributed its problems of racial tension to a number of factors, including overcrowded facilities and inadequate numbers of employees. The application indicated that the crowded conditions and the dissent between the races could be greatly reduced by the purchase of two mobile classroom units and by the employment of two additional teacher-aides, one additional guidance counselor, and one registered nurse.

The district requested ESAP funds of $46,595 for the following activities.

Special pupil personnel services (guidance counselor and nurse)	$18,479
Teacher preparation programs (teacher-aides)	4,716
Special comprehensive planning (mobile classroom units)	23,400
Total	$46,595

The application was received in Region IV on September 5, 1970, and assigned on that date to three program officers for review. Two program officers recommended that the application be funded for $4,430--$2,072 for special pupil personnel services and $2,358 for teacher preparation programs. The third program officer recommended funding for $4,500--all for teacher preparation programs. The established funding level for the district was $4,430.

On September 8, 1970, the superintendent wrote to HEW that, in compliance with suggestions made by the program officer for Kentucky, the district had revised its budget outline to show special pupil personnel services at $2,072 and teacher preparation programs at $2,358, making a total of $4,430, the amount of the established funding level. The review sheet, prepared by the program officer, showed that employment of a guidance counselor and a nurse was considered to be a long-range need but there was nothing in the file to show what activities were intended to be accomplished with the amount granted. The program officer could not recall why she had thought the guidance counselor, the nurse, or the classrooms were not needed. She said that the intention was that the funds granted would be used to hire teacher and counselor aides and that this intention had been communicated to the district by telephone.

SUPPLEMENTING AND SUPPLANTING OF FUNDS

All but one of the 28 applications included in our review contained, as required by the regulations, signed assurances that ESAP funds would be used only to supplement, not supplant, funds which were available to the school district from non-Federal sources for purposes that met the requirements of the program. In addition, the application form requires a statement of the amount of non-Federal funds available to the school district both before and after desegregation and an explanation of any decrease in the amount after desegregation. Regional officials told us that they had accepted the signed assurances at face value, in the absence of an indication that the assurances were not valid.

In the applications filed by Hoke County, North Carolina; Dade County, Florida; and Jackson, Mississippi; the amounts of non-Federal funds available before and after desegregation were not shown. Also, the assurances in the Hoke County application were not signed. The applications filed by Houston, Mississippi; Tarboro, North Carolina; and Winston-Salem City/ Forsyth County, North Carolina, indicated that there were no non-Federal funds available either before or after desegregation.

The program officer for Hoke County told us that the grant should not have been approved without the assurances being signed and that he would get them signed as soon as possible. The program officers for the other school districts offered no explanations for approval of the applications lacking of required information but stated that they would follow up on this matter during their postgrant reviews to these districts.

The application filed by Hinds County, Mississippi, showed a decrease of $629,000 in non-Federal funds available after implementation of the desegregation plan but attributed this decrease to a decline in enrollment and to the formation of a new school district. Also the Carroll County, Georgia, application showed a decrease of $189,150 in such funds and attributed it to a decline in transportation needs.

We noted one case in which information on the application indicated the possibility that ESAP funds might be used to supplant non-Federal funds available to the school district before desegregation. Crisp County, Georgia, applied for and received $55,125 to hire 21 teacher-aides. The application showed, under the school district's planned program for the 1970-71 school year, that, without ESAP funds, eight teacher-aides could be hired but that, with ESAP funds, 21 aides could be hired. Since ESAP funds were provided for all 21 teacher-aides, it appears that the non-Federal funds available for the eight aides who would have been hired in the absence of ESAP may have been supplanted with ESAP funds.

We noted another case where information became available after the grant was made that indicated that ESAP funds might have been used to supplant non-Federal funds otherwise available to the school district. Madison County, Florida, applied for $50,000 to purchase five relocatable classroom units. On September 10, 1970, the district's application was approved for $50,000, but HEW changed the amount for the relocatable classroom units to $48,000 and provided $1,500 for teacher preparation

programs and $500 for special student-to-student programs (with no detail explanation as to the specific purpose of the funds provided for these other activities). On October 22, 1970, the district's request for an advance of funds showed that a contract for construction of the relocatable classroom units was awarded on August 7, 1970. Since funds for ESAP were not appropriated until August 18, 1970, and since the district's application was not approved until September 10, 1970, it appears that ESAP funds may have been used to supplant non-Federal funds which would have been required to pay for the relocatable units if the ESAP grant had not been made.

We intend, in our follow-on visit to the Crisp County and Madison County school districts, to examine into the possibility that ESAP funds were used to supplant non-Federal funds.

ADEQUACY OF PROCEDURES FOR EVALUATION OF PROJECT EFFECTIVENESS

In our opinion, the applications for most of the 28 grants included in our review did not contain, contrary to the regulations, adequate descriptions of methods, procedures, and objective criteria which would permit an independent evaluation of the effectiveness of the projects assisted. We noted that certain applications showed goals of, or expected achievements from, planned evaluations of program activities but that they did not show the methods or objective criteria which could be used to measure the success of the activities.

TRANSFER OF PROPERTY TO NONPUBLIC SEGREGATED SCHOOLS

All but one of the 28 applications included in our review contained, as required by the regulations, signed assurances that the applicants had not engaged in, and would not engage in, the transfer of property or services to any nonpublic school or school system which practiced racial discrimination.

HEW officials told us that the assurances were accepted at face value, in the absence of information to indicate that they were not valid, and that no other information concerning possible transfers to nonpublic schools had been sought in the review and approval of the applications. As previously mentioned, the assurances in the application filed by Hoke County, North Carolina, had not been signed. None of the applications we examined showed the transfer of property to nonpublic schools.

Regional officials told us that transfers of property to nonpublic schools would be considered during their postgrant reviews at the school districts.

TEACHER AND STAFF ASSIGNMENT AND SEGREGATED CLASSES

The regulations require assurances that (1) teachers and staff members who work directly with children at a school will be assigned in a manner

that will result in the ratio of minority to nonminority teachers and to other staff in each school that is substantially the same as the ratio for the entire school system and (2) no discriminatory practices or procedures, including testing, will be employed in the assignment of children to classes or in carrying out other school activities.

Program officers told us that these assurances by school district officials were accepted at face value, in the absence of an indication that they were not valid, and that no other information on this point had been sought in the review and approval of the applications. As previously stated, the assurances in the application filed by Hoke County, North Carolina, had not been signed.

ESTABLISHMENT OF ADVISORY COMMITTEES

Biracial advisory committees

The files for three of the 28 school districts included in our review (Dade County, Florida; Atlanta, Georgia; and Jackson, Mississippi) showed that the districts had biracial committees formed pursuant to a court order. The files for these districts contained evidence that the biracial committees concurred in the applications submitted by the districts.

The files for 11 of the remaining 25 districts either (1) indicated that committees which met the requirements of the regulations had been formed or (2) listed the names of five to 15 organizations which would be asked to appoint members to biracial committees. Some of these districts stated in their applications that appropriate committees would be formed within 30 days after approval of the grant.

The applications submitted by the remaining 14 districts did not satisfy the requirements of the regulations with respect to the formation of biracial committees in that they (1) did not list organizations from which members had been or would be appointed, (2) did not show the race of committee members or did not meet requirements for equal representation of minority and nonminority membership, (3) did not show that at least 50 percent of committee membership were parents of children directly affected by the program, or (4) listed committees which had been appointed by local officials, apparently without the benefit of assistance from organizations representative of the communities to be served by the programs. Program officers told us that they generally assumed proper biracial committees would be formed and that the formation and functioning of such committees would be followed up on during their postgrant reviews.

Student advisory committees

The applications filed by 21 of the 28 districts included in our review did not contain, contrary to the regulations, assurances that a student advisory committee would be formed in each secondary school affected by the project. The project proposed by one district (Tarboro, North Carolina) did not involve any secondary schools.

We believe that the districts may not have furnished these assurances because the application form does not contain this assurance item and the instructions for completing the form do not mention it.

The comments of program officers concerning student advisory committees were essentially the same as those concerning biracial advisory committees.

PUBLICATION OF PROJECT TERMS

The regulations require an assurance that the applicant will, within 30 days after project approval, have published in a local newspaper of general circulation either the terms and provisions of the approved project or pertinent information as to where and how the terms and provisions of the approved project are reasonably available to the public. Program officers told us that the assurances provided by the school districts were accepted at face value and that verifications of publication would be made during their postgrant reviews at the school districts.

CHAPTER 5

COMMENTS ON HEW DALLAS REGIONAL OFFICE PROCEDURES FOR APPROVING GRANTS UNDER ESAP

HEW Region VI, with headquarters in Dallas, Texas, encompasses the five States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. According to Office of Education statistics, 2,432 school districts were operating public schools in these States in the fall of 1969. As of August 26, 1970, 387 school districts were identified by HEW as being potentially eligible for assistance under ESAP. Of these 387 school districts, 200 had received grants totaling over $14 million as of November 13, 1970. Our review included 12 of these grants totaling about $5.4 million. (See app. III.)

We believe that the Dallas Regional Office did not require the school districts to comply with several pertinent requirements of the ESAP regulations. In our opinion, the majority of the applications did not contain, although required by regulations, comprehensive statements of the problems faced in achieving and maintaining desegregated school systems, nor did they contain adequate descriptions of proposed activities designed to effectively meet such problems. Particularly, there was a lack of documentation as to how the proposed activities would meet the children's special needs resulting from the elimination of racial segregation and discrimination in the schools.

Regional officials in general agreed that the applications did not contain adequate statements of the problems or descriptions of the activities designed to meet these problems. They told us, however, that they had satisfied themselves in these respects, prior to project approval, on the basis of their knowledge of the school districts' problems and their contacts with school officials in obtaining additional information. The additional information that was known or obtained, however, was not documented in the project files. We were, therefore, unable to determine whether ESAP funding decisions were based on consideration of the applicants' needs for assistance, the relative potential of the projects, or the extent to which the projects dealt with the problems faced by the school districts in desegregating their schools.

Most of the applications, in our opinion, did not contain, although required by regulations, an adequate description of the methods, procedures, and objective criteria, which could be used by an independent organization to evaluate the effectiveness of each program activity.

The files supporting most of the 12 grants did not evidence full compliance by the districts with the regulations concerning the formation of biracial and student advisory committees and publication of the terms and provisions of the ESAP projects.

We noted that Louisiana law requires that school districts furnish school books and supplies to students in private schools and that transportation may be furnished to students attending parochial schools. Regional officials contacted 14 Louisiana school districts prior to grant approval and

determined that the majority had transferred property or provided transportation to private schools under the State law. HEW officials advised us, however, that they had decided to certify the Louisiana school districts as eligible for ESAP funding if they had no indications of civil rights violations other than the transfers allowed by Louisiana law.

We did not note any information in the regional office files which indicated that the school districts (1) were discriminating on the basis of race in teacher and professional staffing patterns, (2) were assigning children to classes on the basis of their being members of minority groups, or (3) would use their ESAP grants to supplant funds which were available to them from non-Federal sources for purposes of the program.

ELIGIBILITY AND FUNDING OF SCHOOL DISTRICTS

To allot ESAP funds to the five States in Region VI, HEW/Washington determined that there were a total of 387 potentially eligible school districts in the region as of August 26, 1970. Because there were 911,852 minority students in these 387 potentially eligible school districts, the Office of Education, through use of the formula previously described on page 7, allotted over $16 million to school districts in these States, as set forth below.

State (note a)	Number of potentially eligible school districts	Number of minority students	State allotment
Arkansas	126	105,527	$ 1,967,479
Louisiana	65	338,765	6,316,043
Oklahoma	22	14,312	266,837
Texas	174	453,248	8,026,875
Total	387	911,852	$16,577,234

[a]Region VI also includes the State of New Mexico. However, since this State had no school districts implementing court-ordered or voluntary desegregation plans, it could not qualify for assistance and did not receive an allotment.

The regulations require that a school district, to be eligible for ESAP assistance, must have commenced the terminal phase of its voluntary or court-ordered desegregation plan during either the 1968-69, 1969-70, or 1970-71 school year.

Region VI required applicants to submit an assurance of compliance with this regulation and a copy of their desegregation plans. Our review of the 12 projects showed that the applicants had submitted data which appeared to be satisfactory in this regard. Of the 12 school districts, nine were operating under voluntary desegregation plans and three were operating under Federal-court-ordered plans.

The Chief of the Education Division, Office for Civil Rights, told us that the definition of the terminal phase of a desegregation plan, as applied in Region VI, meant the beginning of that phase of the plan where no schools within a school district were racially identifiable; i.e., where there was no assignment of students and teachers to schools on the basis of race, color, religion, or national origin.

The official told us that, in the case of a court-ordered desegregation plan, his office relied strictly on the date set by the court in determining whether the applicant was in the terminal phase as defined by the regulations. He indicated that there would be little, if any, other information available since the Department of Justice was responsible for monitoring a school district's compliance with court-ordered desegregation plans and that his office had not been involved with school districts which were desegregating under court order until ESAP was implemented.

With respect to a voluntary desegregation plan, the Chief of the Education Division told us that his office also relied on the date that the school district implemented its desegregation plan in determining whether the applicant was in the terminal phase. He explained, however, that, in the case of a school district under a voluntary plan, his office would have a file on the district which would contain information on whether the voluntary plan had been approved by HEW and whether there was any indication of noncompliance based on past onsite reviews, pregrant audits, or complaints received from the district.

HEW determined, on the basis of the foregoing factors, that each of the 12 school districts included in our review were in the terminal phase of desegregation prior to project approval.

After ESAP funds were allotted by HEW/Washington to the States in Region VI, regional officials established maximum funding levels for eligible school districts within each State using the priority ranking system established by the Office of Education, Washington. (See p. 23.)

The senior program officer told us that the amounts so computed were used as control figures, in that applicant school districts could not be approved for funding in excess of these amounts. He said that such a control was necessary in the early stages of the program to ensure that available funding would not be exhausted before all eligible districts had an opportunity to participate, because it was not known how many eligible districts would submit applications. He told us also that, as the program progressed, it became evident that not all school districts would be eligible for assistance and that others would not wish to participate in the program. As a result, additional funds were available to supplement those projects that had already been approved and to increase the funding level, where justified, of projects pending approval.

Regional officials told us that school districts were not notified of the maximum funding levels until after they had developed their proposed programs. The officials stated that, during initial workshop conferences and in orientation conferences held in each State prior to the workshop sessions, school district officials were asked to identify their most critical desegregation problems and to develop program activities that would

contribute to solving these problems. The senior program officer said that the estimated costs of programs developed by the school districts, in most instances, were in excess of their established funding levels and that during the workshop sessions regional officials assisted the school districts in revising their proposals downward to stay within their funding levels. Generally, the results of these workshop sessions were not documented in the project files.

We compared the amounts established as maximum funding levels with the amounts of the grants initially received by the 12 school districts included in our review and found that eight districts received grants that were within 3 percent of their established funding levels. The other four grants were substantially above or below the school districts' funding levels. We noted also that four of the districts, which were initially funded at less than their maximum funding levels, later received supplemental grants which resulted in their total grant amounts exceeding their funding levels. Generally, the inadequacies, noted by us in the basic applications, of the descriptions of problems incident to desegregation and needs of the school districts were true of the requests for supplemental funds. These inadequacies are discussed in detail in the following section of this report.

PROJECT POTENTIAL AND CONTENT

We believe that, of the 12 applications included in our review, at least seven had inadequate information concerning the problems faced by the school district in achieving and maintaining a desegregated school system; particularly, the assessments of the needs of the children in the school systems appeared to be inadequate. We believe also that 10 applications, including the seven above, did not, in many areas, provide sufficient information to establish the existence of special needs incident to desegregation.

Regional officials in general agreed that the applications did not contain adequate statements of the problems or descriptions of the activities designed to meet these problems. They told us, however, that they had satisfied themselves in these respects, prior to project approval, on the basis of their knowledge of the school districts' problems and their contacts with school officials in obtaining additional information considered necessary. The additional information that was known or obtained, however, was not documented in the project files. Therefore, we were unable to determine whether ESAP funding decisions were based on a consideration of the applicants' needs for assistance and the relative potential of the projects.

The following is an example of a description of a problem contained in a grant application which we believe was not adequate to show that the problem resulted from desegregation activities.

Houston Independent School District
Houston, Texas

The Regional Commissioner of Education approved ESAP funding in the amount of $212,792 for the Houston Independent School District under the category of "special curriculum revision" programs. The applicant's entire statement of the problem in that area was:

> "The relevancy of all curricula, and especially the social studies curriculum, are suspect in a multi-ethnic school environment."

We believe that this statement is nebulous and does not effectively deal with specific problems that may have existed at the time the application was submitted or that may be expected to develop if a curriculum revision is not forthcoming. Furthermore, the application did not include a comprehensive assessment of the needs of the children in terms of curriculum revision nor did it provide sufficient information to allow a determination that this was an emergency problem resulting from the desegregation of the Houston school system.

The program officer agreed that the Houston application was not adequate to provide a basis for a funding decision. However, he told us that, on the basis of the regional reviewers' knowledge of the school district, the information provided in the application, and the additional contact with the school administrators, the regional reviewers had been able to assure themselves that emergency problems stemming from desegregation did in fact exist, that the needs were valid in light of the problems faced, and that

the proposed projects were designed to effectively deal with these problems. He told us that he had obtained information from school district officials which indicated that the district's curriculum was geared primarily to white students and was not related to needs of students of other ethnic backgrounds. On this basis he concluded that the curriculum revision program was needed. This information, however, was not documented in the project file.

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The following are examples of inadequate descriptions of proposed activities set forth in certain applications which did not show how the proposed activities would help meet the special needs incident to the elimination of segregation as required by the regulations.

Orleans Parish School Board
New Orleans, Louisiana

The Regional Commissioner of Education approved ESAP funding in the amount of $1,953,400 for the Orleans Parish School Board (New Orleans, Louisiana) on October 19, 1970. We noted in our review of the application that items in the approved budget totaling $372,500 (or about 19 percent of the total) were neither described nor accounted for in the cost breakdown or narrative sections of the application. Therefore, regional officials were not aware of the purposes for which these grant funds were to be spent. As a result of our questioning the adequacy of the information supporting this portion of the grant, regional officials wrote to the grantee on December 23, 1970, requesting that proper justification of these items be submitted to the regional office.

San Antonio Independent School District
San Antonio, Texas

The Regional Commissioner of Education approved ESAP funding in the amount of $1,165,300 for the San Antonio Independent School District (San Antonio, Texas) on October 14, 1970. Our review of the application showed that funds in the amount of $105,120 were approved for a community information program designed to promote acceptance of desegregation by accurately informing parents, students, and patrons concerning the goals and activities of the school. The application outlined considerable costs for employee salaries, contracted services, and supplies and equipment, without any description as to how these personnel and supplies and equipment were to be used to solve the communication problem.

Also, funds in the amount of $104,630 were approved for this project under "special pupil personnel services," for the hiring of diagnosticians to conduct physiological and psychological evaluations of 1,000 pupils. The application did not describe the qualifications of the personnel to be employed, the evaluations to be performed, nor how the evaluations would meet the special needs of the school district.

The program officer agreed that the San Antonio application was not comprehensive but told us that the funding decision was based on his

knowledge of the school district, the information in the application, and additional information obtained from the applicant as considered necessary. He said that he had obtained the additional information from the applicant on how the personnel and supplies and equipment were to be used to solve the communication problem, the qualifications of the diagnosticians to be hired, and the type of evaluations they would perform. However, the information obtained was not documented in the project file.

Jackson Parish School Board
Jonesboro, Louisiana

The Regional Commissioner of Education approved ESAP funding in the amount of $42,000 for the Jackson Parish School Board (Jonesboro, Louisiana) on October 2, 1970. The applicant had requested $43,000--$23,000 under special curriculum revision programs and $20,000 under special comprehensive planning. However, the regional reviewers deleted $13,000 from special curriculum revision programs and the entire $20,000 from special comprehensive planning. They then added a total of $32,000 under a new activity--teacher preparation programs--through telephone negotiations with the applicant. The applicant, however, was not required to submit any new information to define the problem or describe how the new activity would be accomplished.

We discussed the lack of information in the application with the program officer who informed us that, during his discussions with representatives of the school district, it was determined that the district had a greater need for a teacher preparation program, which consisted primarily of hiring teacher aides, than it had for the program activities deleted from the application. However, the information which was used as a basis for the determination was not documented in the project file.

SUPPLEMENTING AND SUPPLANTING OF FUNDS

The applications submitted by the 12 school districts covered in our review contained, as required by the regulations, signed assurances that ESAP funds would be used only to supplement non-Federal funds available to the school district for the purposes of the program.

We were advised by the senior program officer that, in those instances where the application showed that non-Federal funds available to a school district had increased after its court-ordered or voluntary desegregation plan was implemented, the program officers were not concerned and performed no investigative efforts. He said that, in those instances where a decrease in non-Federal funds was shown and proper justification was not contained in the application, further investigation was made. He pointed out that, to determine the validity of this type of information, an audit of the applicant's records would be required.

ADEQUACY OF PROCEDURES FOR
EVALUATION OF PROJECT EFFECTIVENESS

In our opinion, eight of the 12 applications we reviewed did not contain, although required by the regulations, an adequate description of the methods, procedures, and objective criteria that could be used by an

independent organization to evaluate the effectiveness of each program activity.

We found that certain applicants showed goals of, or expected achievement from, planned evaluations of program activities. They did not show methods or objective criteria which could be used to measure the success of the activity. For example, the Regional Commissioner approved ESAP funding in the amount of $1,165,300 for the San Antonio Independent School District (San Antonio, Texas) on October 14, 1970, including $220,785 for special community programs. Concerning this program category, the following comments appeared with respect to evaluating the effects of two of the activities.

1. "If the proposed activities are successful, there will be an increased understanding of the school's goals and greater acceptance of desegregation efforts."

2. "If the proposed procedures are successful, a higher percentage of the patrons of the school will become more aware of the school's major goals."

No comments were set forth as to the methods, procedures, or objective criteria to be used in evaluating the activities.

For some of the proposed activities, the applications did not contain any comments relative to the procedures and criteria for evaluating program activities and the program officers did not obtain the submission of the required information.

TRANSFER OF PROPERTY TO
NONPUBLIC SEGREGATED SCHOOLS

All 12 applications included in our review contained, as required by the regulations, a signed assurance that the applicant had not engaged, and would not engage, in the transfer of property or services to any nonpublic school or school system which practiced discrimination.

The Chief of the Education Division, Office for Civil Rights, Region VI, said that, when an application was received, his office performed either a file review or a pregrant audit at the school district and, on the basis of the results, certified to the regional Office of Education that the applicant was or was not in compliance with the nondiscrimination requirements of the regulations.

He explained that during the file review the most current report on an onsite visit and any information on complaints or alleged civil rights violations in the district subsequent to such visit were considered. He added that, if the applicant was under a court-ordered desegregation plan, his staff relied on the written assurance of the school district that it was in compliance with the court order since there would be very little, if any, information in the files on such districts. He said that the only instances where his office did not rely solely on the applicant's assurance was when a pregrant audit was made. He explained that a pregrant audit involved a visit to the applicant school district and a thorough check of all aspects of civil rights compliance.

Three of the 12 school districts were operating under Federal court-ordered desegregation plans. In two of these cases, regional officials relied completely on the assurance of the applicants that they would comply with the court order. No site visits, pregrant audits, or other types of investigation were made prior to project approval as a basis for regional certification that these two applicants were in compliance with this requirement of the regulations. Regional officials performed a pregrant audit for the other court-ordered district on October 14, 1970, 5 days prior to grant approval, which showed that the applicant was in compliance with the regulation requirement.

The other nine school districts were operating under voluntary plans of desegregation. For these school districts, no pregrant audits were made and regional certifications of compliance were based on reviews of the existing files for each school district. Our review of the files of these nine districts showed that the region had made onsite visits to eight of them. Six of the eight onsite visits had been made from 10 to 11 months prior to the dates of grant approval and two were made within 1 week of the grant approval dates. The reports on the onsite visits did not show any civil rights problems, and the files did not contain any evidence of civil rights complaints or violations at the time such grants were approved.

Transfer of property
under Louisiana law

The Chief of the Education Division, Office for Civil Rights, Region VI, told us that the Louisiana State law provides that school districts

furnish school books and school supplies to students in private schools and that transportation may be furnished to students attending parochial schools. He said that, after giving consideration to the Louisiana State law and other indications of possible violations, regional officials decided in early September 1970 that they could not at that time certify that the Louisiana school districts were in compliance with the nondiscrimination requirements of the regulations and the officials requested a ruling from the Office for Civil Rights, Washington, on the eligibility of the school districts for ESAP funding. At that time, the school district applications were placed in a "hold" status awaiting a decision by the Washington office.

Pending the decision by the Washington office, the regional officials decided to make pregrant audits of 14 Louisiana school districts to determine whether these school districts had made transfers to private schools and whether the districts were complying with the nondiscrimination requirements of the regulations.

The Chief of the Education Division told us that during the pregrant audits, the superintendent of each school district signed a separate statement which certified that the district either did or did not transfer property or provide transportation to private schools. He said that, through the pregrant audits and telephone conversations, it was determined that a majority of the school districts did transfer property or provide transportation to private schools.

For the two Louisiana districts included in our review, Orleans Parish was audited by the HEW regional office before grant approval and Jackson Parish was audited after grant approval. These audits revealed that neither district had transferred property or provided transportation to private schools.

The Chief of the Education Division told us that, in a meeting with an official of the Office for Civil Rights, Washington, about October 12, 1970, it was finally decided that, if the pregrant audit or the telephone inquiries showed no civil rights violations other than the transfers which are allowed by Louisiana State law, the Office for Civil Rights would certify that the Louisiana school districts in "hold" status were in compliance with the regulations and would declare them eligible for ESAP funding.

TEACHER AND STAFF ASSIGNMENT
AND SEGREGATED CLASSES

All 12 applications contained, as required by the regulations, signed assurances that the districts were in compliance with the regulation requirements concerning (1) discrimination in teacher and professional staffing patterns and (2) discriminatory practices or procedures, including testing, used in assigning children to classes or in carrying out curricular or extracurricular activities within the schools.

In addition to obtaining these assurances, regional officials either performed a file review or made pregrant audits of the school districts as discussed in the previous section of this report. (See p. 49.)

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ESTABLISHMENT OF ADVISORY COMMITTEES

Biracial advisory committees

Our review showed that many of the 12 school districts had not complied with the regulation requirements concerning the formation of biracial advisory committees.

Two of the 12 school districts planned to use court-appointed advisory committees. One of these districts had complied with the regulation requirements in most respects. The second district, however, had been unable to meet the requirements because of a lack of action on the part of the court (Federal) in appointing committee members.

The other 10 districts were required to form advisory committees within 30 days of approval of their applications. We found that three or more of these districts had not submitted information showing (1) the community organizations from which members of the advisory committees were to be appointed, (2) the minority and nonminority composition of the advisory committees, (3) that parents of children to be directly affected by the project comprised at least 50 percent of the committee membership, (4) that the names of the advisory committee members had been made public, and (5) that the committees had been formed within 30 days of project approval.

We discussed these matters with regional officials who informed us that they would follow up on these and other regulation requirements during their program monitoring visits to the school districts. Our review of the reports prepared on visits to six school districts showed that the program officers followed up in some of the districts to determine if the districts had complied with the regulation requirements concerning biracial committees but that there was no indication of follow-up for others.

For example, one district's advisory committee was not comprised of equal numbers of minority and nonminority members. Although this imbalance in the committee structure was known by the responsible program officer and, in our opinion, should have been corrected at the time of his visit to the district in early December 1970, no corrective action was initiated until we brought the condition to his attention.

Student advisory committees

We found that, of the 10 school districts included in our review which were required by the regulations to form student advisory committees, only three submitted assurances that such committees would be formed. It appears, on the basis of our discussion with the senior program officer, that the assurances were not provided because the application instructions made no provision for submission of the assurance with the application even though it was required by the regulations.

Our review of the files showed, however, that seven of the 10 districts had formed student advisory committees. For two of the remaining three districts, there was no information in the project files showing that such committees had been formed. Regional officials told us that they did not know whether the committees had been formed but that they planned to follow up

on this matter when they made their monitoring visits to the school districts. Although a visit report on the third district showed that a committee would be formed by December 10, 1970, the regional office had not received confirmation that the committee had been formed as of January 8, 1971.

PUBLICATION OF PROJECT TERMS

All 12 of the applications contained, as required by the regulations, the assurance that the applicant would publish the terms and provisions of the project in a local newspaper within 30 days of project approval.

Our review showed that newspaper publications were on file for four of the 12 school districts and that only one of the four had publicized the required information within 30 days of the project approval. The elapsed time from project approval to publication ranged from 55 to 79 days for the other three districts.

The project files did not include information on the required newspaper publications in the remaining eight projects, although the 30-day period had elapsed in all cases. The senior program officer told us that compliance with the publication requirement was to be verified by the program officers during their first visits to the school districts. Although visits had been made to four of these districts, our review of the project files, including assessment reports, indicated that this requirement had not been complied with at the time of the assessment visits or when we subsequently discussed this matter with the individual program officers. The elapsed time from the project approval to the date of our discussions ranged from 58 to 97 days.

CHAPTER 6

COMMENTS ON HEW PHILADELPHIA REGIONAL OFFICE PROCEDURES FOR APPROVING GRANTS UNDER ESAP

HEW Region III, with headquarters in Philadelphia, Pennsylvania, encompasses the five States of Delaware, Maryland, Pennsylvania, Virginia and West Virginia and the District of Columbia. According to Office of Education statistics, 840 school districts were operating public schools in this region in the fall of 1969. As of August 26, 1970, 89 school districts were identified by HEW as being potentially eligible for assistance under ESAP. Of these 89 school districts, 59 had received grants totaling about $4.7 million as of November 13, 1970. Our review included seven of these grants totaling over $1.1 million. (See app. III.)

We believe that the Philadelphia Regional Office did not require the school districts to comply with several pertinent requirements of the ESAP regulations. In our opinion, most of the applications did not contain, contrary to the regulations, comprehensive statements of the problems faced in achieving and maintaining desegregated school systems, nor did they contain adequate descriptions of the proposed activities designed to effectively meet such problems. Particularly, there was a lack of documentation as to how the proposed activities would meet the children's special needs which resulted from the elimination of racial segregation and discrimination in the schools. Regional officials told us that, on the basis of their knowledge of the school districts, their educational experience, and additional information obtained from school district officials, they believed that the projects merited approval.

Most of the applications, in our opinion, did not contain, contrary to the regulations, an adequate description of the methods, procedures, and objective criteria that could be used by an independent organization to evaluate the effectiveness of each program activity. Also the files supporting some of the seven grants did not contain evidence that the school districts were in full compliance with the regulations concerning the formation of biracial and student advisory committees.

Regional officials accepted the signed assurances of the school districts that they were in compliance with the requirement of the regulations concerning discrimination in teacher and professional staffing patterns. For one of the districts (Prince Georges County, Maryland), information in the regional office files, at the time the school district's application was reviewed, showed that the ratio of minority to nonminority faculty in each school within the district was not substantially the same as the ratio for the entire school system, contrary to the regulations. We believe that, because this information was available in the regional office files prior to project approval, regional officials should have contacted school district officials to determine what action was being taken or planned to comply with this requirement of the regulations. By letter dated February 2, 1971, the Regional Director, Office for Civil Rights, requested the superintendent of the district to comply with the assurance given in the ESAP application.

None of the seven applications contained details concerning the qualifications of consultants or other persons who were to be employed for project activities requiring persons having special expertise.

We did not note any information in the regional office files which would lead us to believe that the school districts (1) had transferred any property or services to nonpublic schools which practiced racial discrimination, (2) were assigning children to classes on the basis of their being members of minority groups, or (3) would use their ESAP grants to supplant funds which were available to them from non-Federal sources.

ELIGIBILITY AND FUNDING OF SCHOOL DISTRICTS

To allot ESAP funds to the States in Region III, HEW/Washington determined that there were a total of 89 potentially eligible school districts in the region as of August 26, 1970. On the basis of the 297,802 minority students in these 89 potentially eligible school districts, the Office of Education, through use of the formula previously described on page 7, allotted about $5.5 million to school districts in these States, as set forth below.

State (note a)	Number of potentially eligible school districts	Number of minority students	State allotment
Maryland	6	43,447	$ 810,040
Pennsylvania	11	25,528	475,952
Virginia	71	228,387	4,258,120
West Virginia	1	440	8,203
Total	89	297,802	$5,552,315

[a]Region III also includes the State of Delaware and the District of Columbia. Delaware did not have any potentially eligible school districts, and the District of Columbia had entered the terminal phase of its desegregation plan prior to the 1968-69 school year; therefore, they did not receive allotments.

The regulations require that, for a school district to be eligible for ESAP assistance, it must have commenced the terminal phase of its voluntary or court-ordered desegregation plan during the 1968-69, 1969-70, or 1970-71 school year. The application form requires the applicant to attach a copy of its desegregation plan to its application. Of the seven school districts included in our review, four were under voluntary desegregation plans and three were under Federal court order to desegregate.

The Chief of the Education Division, Regional Office for Civil Rights, told us that, prior to approval of an application, his staff had reviewed the file on the applicant school district for any information that might indicate that the district was not in compliance with the nondiscrimination requirements of title VI of the Civil Rights Act of 1964. With respect to the seven projects included in our review, his office determined the eligibility of these districts as follows.

The eligibilities of two Virginia school districts (Dinwiddie and Powhatan) and one Maryland school district (Dorchester) were approved on the basis of letters sent by the Washington Office for Civil Rights in 1969 to these school districts, which stated that they were in compliance with title VI of the Civil Rights Act of 1964. The Norfolk, Virginia, school district was approved on the basis of the personal knowledge of the Chief of the Education Division concerning the court order placing the school district in the terminal phase of desegregation. This official stated that the eligibility of the Prince Georges County, Maryland, school district was determined after his review of the district's desegregation plan. He certified to the eligibilities of the two Pennsylvania school districts (Harrisburg and Susquehanna) on the basis of instructions from the Washington Office for Civil Rights which, in turn, relied on HEW's Office of General Counsel to determine the eligibilities for the Pennsylvania school districts. An Office of General Counsel official told us that, as long as a Pennsylvania school district was in compliance with the State of Pennsylvania's human relations commission desegregation orders, the school district was considered by HEW to be in a terminal stage of desegregation and eligible to participate in ESAP.

After ESAP funds were allotted by HEW/Washington to the States in Region III, regional officials used the priority-ranking system established by the Washington Office of Education as a basis for determining the relative needs of the school districts. (See p. 23.)

The senior program officer told us that funding levels were not established by Region III personnel in making grants to the school districts. He said that the amounts of grants in Region III had been determined by the program officers on the basis of their evaluations of the problems and needs set forth in the applications and their discussions with school district officials.

PROJECT POTENTIAL AND CONTENT

Of the seven applications included in our review, at least four, in our opinion, did not contain adequate statements of the problems faced by the school districts in achieving and maintaining desegregated school systems. Also we believe that the program descriptions did not provide sufficient information to allow determinations that the proposed assistance would meet emergency or special needs resulting from desegregation. Regional officials expressed the view that, on the basis of their knowledge of the school districts, their educational experience, and supplemental information obtained from school district officials, they were in a position to pass on the merits of the projects.

Following are examples of descriptions of problems contained in grant applications which, we believe, were not adequate to show that the problems resulted from desegregation activities.

Harrisburg City School District
Harrisburg, Pennsylvania

The Harrisburg City School District received a $50,723 grant on October 30, 1970. The only problem in the project application was described as:

> "A significant educational problem facing the School District is the number of students of the age group to be served by the new middle school who demonstrate a lack of positive attitude toward school and school work."

The application was reviewed by three regional program reviewers. One reviewer, in recommending approval, stated:

> "Although there is a well developed proposal manifesting careful and thoughtful planning, its relationship to racial problems appears to be weak."

Another reviewer, in recommending disapproval, stated:

> "This project appears to be designed for general education upgrading as opposed to helping to solve problems relative to integration as now exist."

A third reviewer recommended approval without making any comment.

The program officer informed us that he had spoken to Harrisburg school district officials subsequent to the above comments by the reviewers and had obtained supplemental information regarding the project's relationship to desegregation.

The information obtained from these officials was to the effect that desegregation had placed students of different educational levels and backgrounds in the same classrooms and in sections of the city that were not familiar to them, and that, in some cases, these students had become disruptive and it had been necessary to devise ways to cope with them. According to the program officer, the Harrisburg officials also stated that, because of desegregation, staff and teachers needed to be taught to cope with student problems resulting from the students being placed in new situations not familiar to them or to the teachers.

The program officer told us that, after he relayed this information to the other reviewers, they agreed that the project was acceptable for funding under ESAP. None of these discussions were documented in the project file.

Susquehanna Township School District
Harrisburg, Pennsylvania

Susquehanna Township School District received a $17,100 grant on October 30, 1970. The project application stated that it was desirable to have guidance and counseling services at the elementary-school level not only from the viewpoint of all students but also from the viewpoint of assisting and ensuring satisfactory educational adjustments to students involved in integration. However, the project application referred to the school district's experience, since the school system was desegregated in 1968, as indicating that racial problems caused by integration were almost nonexistent in the elementary schools.

With respect to the latter statement, the program officer told us that this statement meant that there had been no major problem, such as violence, during the last 2 years. The program officer stated also that he had contacted the superintendent of the school district and had been informed that there was a communication problem between white teachers and black students and that the provision of counseling services was the best way to resolve the problem. This additional information was not documented in the project file.

SUPPLEMENTING AND SUPPLANTING OF FUNDS

The seven applications reviewed by us contained assurances, as required by the regulations, that ESAP funds made available to the applicants would be used only to supplement and increase the level of non-Federal funds available to the applicants for the purposes of ESAP. The amounts of non-Federal funds budgeted before and after implementation of the court-ordered or voluntary desegregation plans were included in the project applications. Our review of this data showed that there had been no decrease in the school districts' budgets for non-Federal funds after the court-ordered or voluntary desegregation plans had been implemented.

The Chief of the Education Division, Regional Office for Civil Rights, told us that, to ensure that school districts were complying with the regulation requirement, his staff would examine the school districts' budgets during their postgrant reviews. He said that all expenditures would be examined to verify that the grant funds were being used for authorized purposes.

ADEQUACY OF PROCEDURES FOR EVALUATION OF PROJECT EFFECTIVENESS

We believe that, of the seven applications included in our review, six did not contain, contrary to the regulations, adequate descriptions of the methods, procedures, or objective criteria which could be used by an independent organization to evaluate the effectiveness of each program activity.

We found that, for several of the activities, the applicants had shown goals or desired achievement rather than methods or objective criteria which could be used to measure the success of the activity.

For example, an application in the amount of $36,800 was approved for special pupil personnel services in Dinwiddie County, Virginia. With respect to evaluation procedures, the application indicated that changes in student attitudes should occur and would be observed by the guidance department, but it did not indicate how the changes were to be measured.

Regional officials told us that many of the applicants did not have the necessary staff and time to enable them to provide adequate descriptions of the methods, procedures, and objective criteria to be used to evaluate the effects of their projects. They said that steps were being taken by the Office of Education and by State educational agencies to provide assistance to the school districts in this regard.

TRANSFER OF PROPERTY TO NONPUBLIC SEGREGATED SCHOOLS

The seven applications included in our review all contained, as required by the regulations, signed assurances that the applicants had not engaged, and would not engage, in the transfer of property or services to any nonpublic school or school system which practices discrimination.

With respect to the detection of possible violations, we were informed by the Chief of the Education Division, Regional Office for Civil Rights, that his staff relied on information received from informants and complaints from civil rights groups. He said that he was not aware of any such property transfers and that no applications had been rejected or terminated on such grounds. We did not find any record of complaints in the regional files.

TEACHER AND STAFF ASSIGNMENT AND EMPLOYMENT OF CONSULTANTS

Assignment of teachers and staff

All seven applications contained, as required by the regulations, signed assurances that teachers and other staff members who worked directly with children at a school would be assigned in a manner that would result in a ratio of minority to nonminority teachers and other staff in each school that was substantially the same as the ratio for the entire school system.

The Chief of the Education Division, Regional Office for Civil Rights, told us that no verification of compliance with the assurances, other than a research of the files, had been made prior to the project approval. He said that compliance would be determined by his staff during their post-grant reviews at the school districts.

Disparity in the ratio of minority to nonminority faculty in certain schools

We noted that in July 1970 the superintendent of Prince Georges County Schools (Maryland) provided to the Regional Office for Civil Rights data concerning the anticipated composition of the faculty at all the schools within the school district for the 1970-71 school year. The data showed that the ratio of minority to nonminority faculty in each school within the district was not substantially the same as the ratio for the entire school system, contrary to the regulations. The following examples show the disparity between the ratio of minority to nonminority faculty in certain schools in the district and the ratio for the entire school district, which was 15 percent minority to 85 percent nonminority.

School	Number of faculty		Ratio of minority to nonminority faculty	
	Minority	Nonminority	Minority	Nonminority
			(percent)	
Senior high:				
Central	18	52	26	74
Crossland	3	140	3	97
Fairmont Heights	26	41	39	61
High Point	3	128	2	98
Northwestern	5	116	4	96
Junior high:				
Bladensburg	1	52	2	98
Kent	31	30	51	49
Laurel	1	47	2	98
Mary Bethune	38	18	68	32
Elementary:				
Allenwood	-	21	-	100
Beaver Heights	20	6	77	23
Berwyn Heights	-	26	-	100
Bond Mill	-	33	-	100
Cherokee Lane	-	30	-	100
Glenarden Woods	25	2	93	7

Since this data was received by the Philadelphia Regional Office on August 6, 1970, before the Prince Georges County project application was approved on September 18, 1970, we asked the Chief of the Education Division why the project had been approved in the face of the apparent noncompliance with the assurance given in its application that the ratio of minority to nonminority faculty in each school would be substantially the same as the ratio for the entire school system. This official stated that it was an oversight on his part and that he should have contacted school district officials to determine what action was being taken to comply with the regulation requirement before approving the district's application.

During our review of the project files, we noted that a visit was made to the Prince Georges County Schools by regional officials during the period October 19 to 21, 1970, approximately 1 month after the project was approved. With respect to faculty desegregation, the report contained a statement that 23 of the 169 elementary schools had all-white faculties and that several schools had predominately black faculties.

Regional Office for Civil Rights officials told us that two subsequent visits were made to Prince Georges County in an attempt to rectify the problem relating to the desegregation of faculty. On February 2, 1971, the Regional Director, Office for Civil Rights, sent a letter to the superintendent of Prince Georges County Schools stating that measures should be undertaken at once to abide by the assurance given in the district's ESAP application.

Employment of consultants

None of the seven applications contained details concerning the qualifications of consultants or other personnel who were to be employed for project activities requiring personnel with special expertise.

For example, with respect to the Harrisburg application, the only mention of consultants was in the detailed budget which showed that $1,500 had been budgeted for the employment of consultants at $75 a day and expenses. The program officer said that, although the specific responsibilities of consultants were not described in the project application, he knew which project activities required the use of consulting services as a result of his personal contact with school district personnel. With respect to the amount budgeted for consultants, the senior program officer told us that, when the project officers visit the school districts, they would carefully review the vouchers supporting payments to consultants.

SEGREGATED CLASSES

The applications of all seven school districts contained signed assurances, as required by the regulations, that no discriminatory practices or procedures, including testing, would be employed in the assignment of children to classes or in carrying out curricular or extracurricular activities within the schools.

We were informed by the Chief of the Education Division, Regional Office of Civil Rights, that his staff had reviewed the files pertaining to the school districts and had relied on the assurances contained in the project applications in approving grants. He stated that no pregrant reviews had been made of any of the school districts. He told us, however, that Regional Office for Civil Rights personnel had visited Prince Georges County.

The report on this visit indicates that regional officials questioned the number of transfers by white students from certain desegregated schools to other schools with a lesser proportion of minority students that had taken place after the desegregation plan was implemented. Information contained in HEW files showed that, prior to the visit by Office for Civil Rights personnel, a moratorium had been placed on such transfers by the school district and that action had been taken to develop an acceptable policy with regard to student transfers. We were informed that this situation was being closely monitored by the Office for Civil Rights.

ESTABLISHMENT OF ADVISORY COMMITTEES

Biracial advisory committees

Information in the HEW project files showed that five of the seven school districts included in our review had biracial advisory committees which were in compliance with the provisions of Federal court orders or the regulations.

The biracial committee for the Harrisburg City School District did not meet the regulation requirements that the committee membership be comprised of 50 percent minority and 50 percent nonminority members. The committee was composed of 11 white and eight black members. The regional office files indicated that the other school district, Prince Georges County (Maryland) had not established a biracial advisory committee. Regional officials told us that they had been in contact with the school districts in an effort to resolve these problems in these two school districts.

Student advisory committees

Five of the seven school districts were required to form student advisory committees in the secondary schools affected by the projects and gave assurances that the committees would be formed. Our review showed that two of the districts had complied with the regulation requirements in this regard and that one had formed a student advisory committee, which did not meet the requirement of the regulations that the committee be comprised of an equal number of minority and nonminority students. At the time of our review, there was no information in the files to indicate that the committees had been formed for the other two districts. Regional officials

told us that they would follow up on the compliance with this requirement of the ESAP regulations in these three school districts.

PUBLICATION OF PROJECT TERMS

All seven applicants submitted signed assurances, as required by the regulations, that the terms and provisions of their projects would be published within 30 days after project approval.

Our review of the project files showed that two of the districts had published the required data. The Chief of the Education Division, Regional Office for Civil Rights, told us that the school districts were required to maintain evidence of publication in their files but were not required to submit such evidence to the regional office. He told us also that evidence of publication would be obtained during postgrant reviews in the school districts.

CHAPTER 7

COMMENTS ON HEW SAN FRANCISCO REGIONAL OFFICE PROCEDURES FOR APPROVING GRANTS UNDER ESAP

HEW Region IX, with headquarters in San Francisco, California, encompasses the four States of Arizona, California, Hawaii, and Nevada. According to Office of Education statistics, 1,394 school districts were operating public schools in these States in the fall of 1969. As of August 26, 1970, eight school districts were identified by HEW as potentially eligible for assistance under ESAP. Of these eight school districts, two--Pasadena and Inglewood, California--received grants totaling about $190,000. Our review included both of these grants. (See app. III.)

On October 6, 1970, Pasadena applied for $125,000 and on December 7, 1970, received a grant totaling $115,000--$95,800 for special curriculum revision (principally to hire 21 teacher-aides), $12,800 for special community programs, and $6,400 for special pupil personnel services.

On October 22, 1970, Inglewood applied for $126,000 and on December 14, 1970, received a grant totaling $74,938--$71,771 for special pupil personnel services and $3,167 for special curriculum programs.

We believe that the procedures used in Region IX to evaluate the Pasadena and Inglewood applications provided enough information for HEW to determine that the proposed program activities met the requirements of the regulations. Before the school districts had determined their desegregation needs and developed proposed programs to solve those needs, however, Region IX officials established funding ranges within which grants to potentially eligible school districts would be made. Information on the funding ranges was communicated to the Pasadena School District and to other school districts subsequently determined to be ineligible.

We believe that a procedure under which school districts are informed in advance of the amounts that can be made available to them under ESAP could tend, in some instances, to bring about inflated requests for funds and, in other instances, unrealistically low estimates of financial needs to overcome major problems arising from school desegregation.

The applications of Pasadena and Inglewood did not contain, contrary to the regulations, assurances that student advisory committees would be formed in each secondary school affected by the project. Although both applications contained references to biracial advisory committees, they were not complete with respect to when the committees would become operational or what community organizations would be represented on the committees.

In our opinion, neither application contained, contrary to the regulations, an adequate description of the methods, procedures, and objective criteria that could be used by an independent organization to evaluate the effectiveness of each program activity.

We did not note any information in the regional files which would lead us to believe that either school district (1) had transferred any property or services to a nonpublic school which practiced racial discrimination, (2) was discriminating on the basis of race in teacher and professional staffing patterns, (3) was assigning children to classes on the basis of their being members of minority groups, or (4) would use its ESAP grant to supplant non-Federal funds available to it for the purposes of ESAP.

ELIGIBILITY AND FUNDING OF SCHOOL DISTRICTS

Region IX used several sources, primarily State departments of education, to determine which school districts had implemented desegregation plans and then submitted to HEW/Washington the names of eight districts whose plans they had determined were in the terminal phase. The Division of Equal Educational Opportunities in Washington then requested each of these districts to submit a copy of its desegregation plans to HEW/Washington for review and final determination of its eligibility. On the basis of the 25,903 minority students in these eight districts, all of which were in California, the Office of Education, through use of the formula previously described on page 7, allotted $482,944 to Region IX on August 26, 1970.

While the final eligibility of the eight districts was being considered by HEW/Washington, the names of 14 additional potentially eligible districts were submitted to Region IX by the California State Department of Education. Seven of these districts sent their desegregation plans to HEW/Washington early in September 1970.

On September 18, 1970, a meeting of school superintendents from potentially eligible school districts was held in San Francisco to discuss the purposes and requirements of ESAP. On September 21, 1970, 3 days later, HEW regional officials held a meeting at Riverside, California, with school district representatives to explain the application procedures. Prior to this meeting, regional officials were informed that three of the 15 districts whose desegregation plans had been sent to Washington were not interested in submitting proposals for ESAP funds. At the time of this meeting, a final determination on the eligibility of the remaining 12 districts had not been received from Washington.

On October 6, 1970, HEW's Office of General Counsel notified Region IX that only two of the 15 districts--Pasadena and Inglewood--were eligible for financial assistance under ESAP. This determination was based on a decision that Pasadena and Inglewood were the only districts in Region IX under court order to desegregate.

Our review showed that an allocation of available funds--$482,944--was made among the 12 school districts in Region IX which the regional staff had concluded were potentially eligible for ESAP and were interested in receiving funds. According to regional officials, the method used to make this allocation was based on the number of minority children in each district times $10 plus a flat amount of $10,000. The resulting amount became the basis for establishing a funding range within which grants to the school districts would be made. The upper limits of the range were established by adding about 10 percent to the amount, and the lower limits were established by subtracting about 10 percent from the amount.

According to Region IX officials, these funding ranges were on their own initiative as an administrative tool designed to ensure that available funds would not be exhausted before all eligible districts had an opportunity to participate. The officials said that some districts had problems of such magnitude that they could possibly submit a proposal requesting an amount which would equal or exceed the total funds available to the States.

At the previously mentioned meeting on September 21, 1970, representatives of potentially eligible districts were informed by HEW regional officials of the funding ranges established for their districts before they had developed proposed programs to help solve their desegregation problems.

A representative of the Pasadena School District attended this meeting and was advised that the school district's funding range was established at $110,000 to $120,000. On October 6, 1970, Pasadena submitted an ESAP project proposal requesting $125,000. We noted that, in the review of the proposal by regional officials, one program activity, for which $10,000 was requested, had been deleted from the proposal because the program officer believed that it was not related to desegregation and that it would have supplanted the district's own funds. Consequently, a grant of $115,000 was approved.

The Inglewood district, which did not have a representative at the September 21, 1970, meeting, submitted a project proposal requesting $126,000, which substantially exceeded the funding range established for this district of $35,000 to $45,000. Regional officials told us that they had informed Inglewood that it had to reduce its request to about $75,000 because the number of minority students in the Inglewood School District in relation to the number of students in Pasadena did not justify the amount requested.

By letter dated January 23, 1971, the senior program officer, Office of Education, Region IX, furnished us with an explanation of how the $74,938--the amount of the grant made to Inglewood--had been developed. He stated that, during the initial review of the Inglewood application, a proposed activity for community publications--budgeted for about $8,000--was questioned as not being related to a problem resulting from desegregation. He stated also that the hiring of new staff under the proposal would take at least 2 months and that therefore the proposal could be reduced in this area--about $40,000 for salaries and related employee benefits--without changing the scope of the program. In addition, other reductions totaling about $3,000 were made. On this basis, regional officials concluded that Inglewood could reduce its request for funds without hurting the program but that it should not be held to the maximum of its established funding range of $45,000 because its minimum program needs would require about $75,000. Inglewood then submitted a revised application requesting $74,938.

Regional officials told us that, in the future, districts would not be given funding ranges in advance but would be asked to submit proposals using three assumptions regarding possible levels of funding, as follows:

1. Unlimited funding is available; therefore the full program should be presented.

2. Funds are limited; therefore program activities should be ranked in order of priority.

3. Funds are extremely limited; therefore one bare-bones activity of highest priority should be identified.

PROJECT POTENTIAL AND CONTENT

Our review of the applications of both the Pasadena and the Inglewood School Districts revealed that they had identified problems which appeared to be related to desegregation and proposed program activities designed to meet these problems. It appeared that the need for regional consideration of project priorities between school districts had lessened, since only two applications were received.

Regional officials told us that meetings and visits had been held with school district personnel to obtain explanations on certain proposed activities prior to project approval. They said that some of the proposed program activities were not approved because the activities were not considered to be related to a problem resulting from desegregation. (See p. 65.) Regional officials told us that, during their first monitoring visit, the program officers would obtain detailed explanations of how the activities were being conducted.

SUPPLEMENTING AND SUPPLANTING OF FUNDS

Regional officials told us that they had relied upon the assurance statements, signed by the school district officials, in their applications that ESAP funds would be used only to supplement, not to supplant, non-Federal funds which were available to them for program purposes. Regional officials told us also that, during their postgrant monitoring of the projects, they would determine whether the school districts were complying with this assurance.

Pasadena's application showed an increase in the amount of non-Federal funds available after implementation of its desegregation plan, whereas Inglewood's application showed a decrease, which was attributed to a decline in student enrollment.

ADEQUACY OF PROCEDURES FOR EVALUATION OF PROJECT EFFECTIVENESS

We believe that neither application contained, contrary to the regulations, an adequate description of the methods, procedures, and objective criteria that could be used by an independent organization to evaluate the effectiveness of each program activity.

The Pasadena application presented evaluation procedures, methods, and criteria in only summary outline form. The methods outlined were extremely generalized for some program activities and were not specific enough to measure the effectiveness of such activities.

The evaluation procedures and criteria presented in the Inglewood application were also inadequate. For example, for one program activity, Inglewood stated merely that consultants would be engaged to review this activity, but there was no description of the evaluation procedures to be followed. Region IX officials told us that the evaluation requirement had caused considerable confusion among the school districts and that Inglewood would be required to revise the evaluation section of its application.

TRANSFER OF PROPERTY TO NONPUBLIC SEGREGATED SCHOOLS

Neither Inglewood nor Pasadena listed any property or services in its application as being transferred to a nonpublic school or school system, and the school district superintendents certified that no such transfers had been made.

Office for Civil Rights regional officials told us that they had visited the Pasadena School District in connection with other programs and that, in gaining knowledge of the district's policies, were confident that the district would not support a segregated school. A similar visit had not been made to the Inglewood School District. It was the view of the Office for Civil Rights officials that any transfers of property to support segregated schools would very likely be the subject of a citizen's complaint. We found no record of such complaints in the regional files.

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TEACHER AND STAFF ASSIGNMENT

Regional officials accepted, without verification, the assurances in the Inglewood and Pasadena applications that the districts were in compliance with HEW regulations concerning nondiscrimination in teacher and professional staffing patterns.

The Pasadena desegregation plan, submitted with the application, stated that the district had at that time a full complement of teachers and administrators. It also pointed out that, even though teachers from minority groups were in short supply, efforts would be made to hire more minority professional people as positions became available. A detailed recruitment plan showed that Pasadena intended to contact colleges throughout the Nation in its efforts to hire more teachers from minority groups. The Inglewood application and desegregation plan made no reference to future minority staffing patterns.

Office for Civil Rights regional officials told us that they would place reliance on monitoring of the projects to determine whether the districts were violating the assurances regarding discrimination in teacher and professional staffing patterns. These officials told us also that they had received no such complaints from minority teachers regarding racial discrimination practices in the two districts, and we found no record of such complaints in our review of the files.

SEGREGATED CLASSES

Both applications contained signed assurances, as required by the regulations, that no discriminatory practices or procedures, including testing, would be employed in assigning children to classes or in carrying out curricular and extracurricular activities within the schools.

Office for Civil Rights regional officials told us that they had not taken any specific action to verify the school districts' assurances but had relied on their background knowledge of possible civil rights violations and on complaints that might be received from people in the district that children were being assigned to segregated classes. We did not find any record of such complaints in the files.

ESTABLISHMENT OF ADVISORY COMMITTEES

Biracial advisory committees

The applications of both Inglewood and Pasadena contained references to biracial committees, but they were not complete in some respects.

The Inglewood application stated that a study group in the district had recommended the formation of an advisory committee, with 50 percent of its members being from minority groups. The application, however, did not stipulate when the committee would become operational and did not name the community organizations that would be represented on the committee.

The Pasadena application indicated that the district planned to use, as its biracial committee, a group which had been formed in the prior school year to review some of its own programs, as well as federally funded programs, supplemented by representatives from other unidentified organizations. We were told by a regional official, however, that the district's plans to reorganize this committee had been abandoned because information received on its past performance indicated room for improvement. A desire for a more effective biracial committee resulted in an agreement between the school district and HEW that a new committee would be formed within 30 days after grant approval.

The Inglewood and Pasadena School Districts had until January 7 and January 14, 1971, respectively, to form their advisory committees. As of January 19, 1971, Region IX had not received notification from either grantee that such a committee had been established. At our request, regional officials contacted each school district and were told that each district was in the process of establishing its biracial advisory committee.

Student advisory committees

In processing the applications of both Inglewood and Pasadena, Region IX officials did not obtain written assurances, contrary to the regulations, that a student advisory committee composed of minority and nonminority group children would be formed in each secondary school affected by the project.

The senior program officer told us that both districts understood that student advisory committees were required and that both planned to form

such committees. He said that the districts had not mentioned the student committees in their applications because they did not plan to use ESAP funds to provide support for such committees. Region IX officials agreed, however, that they should have required that the assurances be submitted and said that action would be taken to obtain them.

PUBLICATION OF PROJECT TERMS

The applications submitted by both school districts contained, as required by the regulations, signed assurances that the terms and provisions of the projects would be published in local newspapers within 30 days after project approval. As a result of our inquiry as to whether the districts had complied with this requirement, a regional official contacted district officials and learned that, although each district had published an article concerning its grant, the article on the Pasadena grant did not state the terms and provisions of the grant, contrary to the regulations. The officials told us that Pasadena had agreed to have another article published.

CHAPTER 8

COMMENTS ON HEW KANSAS CITY REGIONAL OFFICE PROCEDURES FOR APPROVING GRANTS UNDER ESAP

HEW Region VII, with headquarters in Kansas City, Missouri, encompasses the four States of Iowa, Kansas, Missouri, and Nebraska. According to Office of Education statistics, 2,835 school districts were operating public schools in these States in the fall of 1969. As of August 26, 1970, 14 school districts, all in Missouri, were identified by HEW as being potentially eligible for assistance under ESAP.

Three of the 14 school districts applied for grants under the program but only one--New Madrid County R-1 Enlarged School District, New Madrid, Missouri--was determined eligible by HEW and received a grant as of November 13, 1970. Our review included this grant. (See app. III.)

On September 24, 1970, New Madrid school district applied for $92,651 and, on October 22, 1970, received a grant totaling $57,385--$21,770 for special community programs and $35,615 for special pupil personnel services.

We believe that the procedures used in Region VII for evaluating the New Madrid application provided enough information for HEW to determine that the proposed program activities met the requirements of the regulations.

We believe that the applicant's statement of the problems faced in desegregating the school district was, in general, descriptive enough for the program officer to evaluate the district's need for assistance and the relative potential of the project. The program officer, however, told us that, to determine the priority of needs of program activities set forth in the application, he had relied on his past educational experience and judgment. The program officer told us also that he had obtained supplemental information from school district officials. This information, however, was not documented in the files.

The program officer obtained the assurances required by HEW regulations and, in some instances, performed additional work prior to approval of the application to ensure that the applicant had complied with the regulations. Generally the supplemental information obtained was not documented in the files.

ELIGIBILITY AND FUNDING OF SCHOOL DISTRICTS

In August 1970, the Division of Equal Educational Opportunities, Office of Education, Washington, verbally requested the Region VII program officer to obtain a listing of potentially eligible school districts within the four States in that region so that ESAP funds could be allocated to these States. According to the program officer, information on the potentially eligible school districts was obtained at State departments of education in the four States, because these were the only known central sources in the

region where information on court orders and desegregation plans submitted by districts in the States was available.

HEW determined that Missouri was the only State in the region with school districts that were potentially eligible for ESAP funds. Late in August 1970, 14 districts were reported to HEW/Washington as being potentially eligible for assistance under ESAP. On the basis of the 7,269 minority children in all 14 districts, the Office of Education, through use of the formula previously described on page 7, allotted $135,526 to Missouri on August 26, 1970, although most of the 14 districts were later determined to be ineligible for, or were not interested in applying for, ESAP funds.

On September 1, 1970, the 14 potentially eligible school districts were requested to submit copies of their desegregation plans and related information to HEW/Washington for final determination of each district's eligibility. Four Missouri districts responded to the request.

On September 16, 1970, an official from the Division of Equal Educational Opportunities in Washington, the Region VII program officer, and a Missouri department of education official held an informational meeting with representatives of nine of Missouri's 14 potentially eligible school districts to inform them of assistance available under ESAP. The program officer told us that the other five districts had withdrawn prior to the meeting and that, as a result of the meeting, five more districts had withdrawn because they either were not interested or did not consider themselves eligible. The remaining four districts had submitted copies of their desegregation plans to HEW/Washington for review.

On September 24 and 25, 1970, Division of Equal Educational Opportunities officials held workshops to explain the application procedures, and they invited the four remaining Missouri school districts to attend. Three of the four districts attended and later submitted applications. The program officer told us that the superintendent of the fourth district had informed him that the district did not want to apply for ESAP funds at that time.

The program officer told us also that funds had not been allocated to the districts nor had any funds been reserved for a specific district. He said that he did not review the applications with any predetermined amount of funds per district in mind and that he had no requirement to spend all the money allocated to Missouri. He expressed his opinion that, if one applicant had the greatest need and required all the State's allocation, he would recommend giving all the funds to this applicant in lieu of giving part of the funds to applicants with lesser needs.

The program officer received the three applications on October 2, 1970, and took them to Washington on October 4, 1970, where he and three Division of Equal Educational Opportunities officials reviewed them. The three applicants requested a total of about $250,700 compared with Missouri's allocation of $135,526, but a grant of only $132,690 was approved pending final determination of eligibility. The program officer told us that the applications had been reviewed on the assumption that all three districts were eligible.

On October 6, 1970, HEW's Office of General Counsel informed the Division of Equal Educational Opportunities that only New Madrid was eligible for a grant. The other two school districts were determined to be ineligible, because they had not entered the terminal phase of their desegregation plan during the time period specified by the regulations. The amount of funds approved for New Madrid on October 22, 1970, was not changed after it became the only eligible district--$92,651 was originally requested and $57,385 was granted.

PROJECT POTENTIAL AND CONTENT

We reviewed the New Madrid application and found that it had identified two problem areas--a breakdown in parent-community school communication and severe educational deficits of some of the children--and proposed program activities designed to meet these problems.

In our opinion, the proposed activities were authorized by the regulations and seemed to be related to the problems discussed in the application. Also the application identified objectives and achievements anticipated and specified qualifications of officials needed to carry out the activities. The budget breakdown corresponded with the program activities and further specified the officials to be involved and the extent and type of costs to be incurred in accomplishing the activities.

The program officer, however, told us that, to determine the priority of needs of program activities set forth in the application, he had relied on his educational experience and judgment. He said that, in reviewing the three applications received, he had considered program activities which stressed personnel services oriented to the needs of the children involved in desegregation as being of the highest priority and that, in his opinion, project items for hardware or facility items (capital expenditures) were difficult to justify. Consequently, he eliminated certain hardware or facility items from the applications, although they were allowable under the regulations.

For example, a mobile reading-clinic unit and related equipment and staff were eliminated from the New Madrid application, because the program officer did not believe that the need for the mobile clinic resulted from desegregation or that, based on the current thinking of educators, its use was a good approach to learning.

SUPPLEMENTING AND SUPPLANTING OF FUNDS

The application contained assurances, as required by HEW regulations, that the ESAP funds made available would be used only to supplement and increase the level of funds available to the applicant from non-Federal sources. In addition to reviewing the assurance statement, the program officer told us that he had reviewed the school district's school-year budgets for 1968-69, 1969-70, and 1970-71 to ensure that the budgets had not decreased after desegregation. The program officer said that the district's non-Federal funds had increased after desegregation. We noted no documentation in the project file, however, to verify the program officer's review.

The program officer said that in Missouri a school district's budget is prepared and approved by voters in the spring preceding the fall school year. Consequently, he said that the applicant's budget (level of non-Federal funds) was set prior to knowledge of the program.

ADEQUACY OF PROCEDURES FOR
EVALUATION OF PROJECT EFFECTIVENESS

The key program activities listed in the application were special community programs for promoting understanding among students, teachers, parents, and community groups and in-service training for teachers to enable them to detect severe reading disabilities and to provide remediation to the students.

The application set forth the district's intended methods and procedures for evaluating the effects of these program activities. The success of liaison activity to promote better understanding between the community and the school was to be judged by how well the activity worked in decreasing antagonism toward the school's educational process, lessening racial conflicts, and increasing cooperation between the community and the school system. Pretesting and posttesting of elementary students was to be used to determine the success of the remedial reading activity, along with a comparison of academic records and an evaluation of behavioral and personality changes by the employees who had contact with the students.

The program officer believed that the success of the activities could be evaluated by an independent evaluator.

TRANSFER OF PROPERTY TO
NONPUBLIC SEGREGATED SCHOOLS

The New Madrid application did not list any property or services transferred to a nonpublic school or school system, and the school district superintendent certified that no such transfers had been made.

The program officer told us that he had reviewed the files in the Missouri department of education to determine whether any new private schools had been established in the New Madrid school district in recent years. He found that there were no large nonpublic schools and that, in fact, there were only a very few parochial schools in the district. The program officer also stated that he had checked student enrollment before and after desegregation and found that it had not dropped.

TEACHER AND STAFF ASSIGNMENT AND EMPLOYMENT OF CONSULTANTS

Other than obtaining the applicant's assurance, as required by the regulations, HEW obtained little additional information prior to approval of the application as to whether the district was in compliance with the regulations concerning discrimination in teacher and professional staffing patterns. Also we believe that the application provided sufficient detail whereby the program officer could verify the qualifications of the personnel requested to conduct the proposed activities.

The program officer told us that he had relied on the applicant's assurance that the school district was in compliance and that he had planned to make an onsite visit to verify this assurance.

Before approval of the application, Office for Civil Rights investigators had visited five schools in the New Madrid district and inquired into areas of minority-teacher assignment to classes with predominately white students, student-testing practices, and integration of teachers from the all-black schools into the school system. The investigators concluded that there was no clear evidence in the district of noncompliance with the nondiscrimination requirements of title VI of the Civil Rights Act of 1964.

With respect to staff's being hired under the program, the application stated, for example, that two reading specialists would be hired to conduct the project's special pupil personnel services activity. Although the application did not show the specific qualifications these individuals were to possess, the program officer contended that showing these qualifications was not necessary because qualifications are governed by State standards. The program officer said that the school district superintendent had assured him that individuals having the required qualifications could be obtained and that he would verify the qualifications during his onsite visit.

SEGREGATED CLASSES

The application contained signed assurances from the school district, as required by the regulations, that no discriminatory practices or procedures, including testing, would be employed in assigning children to classes or in carrying out curricular or extracurricular activities within the schools.

The regional file on the New Madrid project contained a copy of a report on an Office for Civil Rights onsite visit made to five schools in New Madrid prior to project approval. The report showed that the district had implemented a desegregation plan, that it was in the terminal phase of desegregation, and that the schools in the district were completely desegregated. The report also indicated that there were no all-blackschools and that the investigators had been advised that the district's buses; school organizations; and athletic, social, and extracurricular activities within the schools were completely desegregated.

The program officer told us that, prior to approval of the application, an official of the Division of Equal Educational Opportunities in Washington informed him verbally that the Office for Civil Rights had cleared the application. However, a form indicating Office for Civil Rights review and clearance had not been submitted to the regional office. The responsible Office for Civil Rights official told us that New Madrid was determined to be in compliance with this assurance but that, through an oversight, the clearance form had not been prepared. After we discussed this matter with the official, the form was prepared and made a part of the record.

ESTABLISHMENT OF ADVISORY COMMITTEES

Biracial advisory committee

The application stated that the school district had a biracial advisory committee prior to submission of the application. The composition of the committee appeared to meet the requirements of the regulations.

The committee was composed of 10 members, five black and five white. The application included a statement that the committee members were parents or grandparents of children attending schools affected by the projects. The regulations require that at least 50 percent of the committee members be parents. The program officer told us that the school district superintendent had assured him that all the committee members were either parents or guardians of children attending schools affected by the projects, although the application file was not documented to support his statement.

The application indicated that the biracial advisory committee was in existence when the application was signed by the school district superintendent on September 24, 1970. A statement in the project file, signed by the chairman of the committee on September 28, 1970, indicated that the committee had endorsed the proposed project.

The program officer told us that the committee probably had been formed under title I of the Elementary and Secondary Education Act or Office of Economic Opportunity programs and that he believed that the committee had satisfied HEW regulations.

Student advisory committee

No student advisory committee was established, because the proposed program did not apply directly to secondary schools.

PUBLICATION OF PROJECT TERMS

The application submitted by the school district contained, as required by the regulations, a signed assurance that the terms and provisions of the project would be published in a local newspaper within 30 days after project approval.

During our review the program officer contacted the school district superintendent and was informed that the published articles were on file. The program officer, however, did not know whether the articles had been published within 30 days after grant approval.

CHAPTER 9

SCOPE OF REVIEW

We reviewed the legislative history of the Emergency School Assistance Program, the related Federal regulations, and the program policies and procedures of the Office of Education and the Office for Civil Rights, HEW. In addition, we reviewed project applications and other pertinent documents for 50 grants reported by the Office of Education as having been approved through November 13, 1970. We also interviewed HEW personnel having responsibilities under the program in the HEW headquarters in Washington and in five HEW regional offices.

Our work was concerned primarily with a review of HEW policies and procedures for approving grants under ESAP and was conducted at the HEW headquarters in Washington and at the HEW regional offices in Atlanta, Dallas, Kansas City, Philadelphia, and San Francisco. We did not perform any work at the school districts. Examination of the expenditures of the school districts relating to these grants is to be made in a follow-on review.

APPENDIXES

APPENDIX I

STATISTICS RELATING TO PARTICIPATION IN
EMERGENCY SCHOOL ASSISTANCE PROGRAM
IN HEW REGIONS INCLUDED IN
GAO'S REVIEW

HEW region--State	Number of public school districts: Within the State (note a)	Potentially eligible (note b)	Provided technical assistance by HEW (note c)	Status of applications for financial assistance submitted by school districts as of November 13, 1970: Received	Approved	Rejected	Under review
REGION III--PHILADELPHIA:							
Delaware	26	-	-	-	-	-	-
District of Columbia	1	-	-	-	-	-	-
Maryland	24	6	6	5	2	1	2
Pennsylvania	600	11	11	10	9	1	-
Virginia	134	71	69	55	48	1	6
West Virginia	55	1	3	2	-	-	2
Total	840	89	89	72	59	3	10
REGION IV--ATLANTA:							
Alabama	118	110	112	80	57	2	21
Florida	67	64	58	58	57	-	1
Georgia	190	168	168	157	144	-	13
Kentucky	193	7	7	5	4	-	1
Mississippi	148	149	149	100	86	-	14
North Carolina	152	125	124	91	81	-	10
South Carolina	93	92	93	70	64	-	6
Tennessee	149	58	59	46	37	-	9
Total	1,110	773	770	607	530	2	75
REGION VI--DALLAS-FORT WORTH:							
Arkansas	384	126	121	78	69	1	8
Louisiana	66	65	59	44	36	-	8
New Mexico	89	-	-	-	-	-	-
Oklahoma	685	22	18	15	9	5	1
Texas	1,208	174	138	106	86	5	15
Total	2,432	387	336	243	200	11	32
REGION VII--KANSAS CITY:							
Iowa	453	-	-	-	-	-	-
Kansas	311	-	-	-	-	-	-
Missouri	651	14	7	3	1	2	-
Nebraska	1,420	-	-	-	-	-	-
Total	2,835	14	7	3	1	2	-
REGION IX--SAN FRANCISCO:							
Arizona	294	-	-	-	-	-	-
California	1,082	8	8	2	2[d]	-	-
Hawaii	1	-	-	-	-	-	-
Nevada	17	-	-	-	-	-	-
Total	1,394	8	8	2	2	-	-
TOTAL	8,611	1,271	1,210	927	792	18	117

[a] Based on Office of Education statistics in the fall of 1969.

[b] Identified by HEW as potentially eligible as of August 26, 1970.

[c] According to HEW--in some States, school districts other than those identified as being potentially eligible as of August 26, 1970, were provided with information about ESAP and with assistance in preparing project applications.

[d] Reported by the Office of Education as having been approved as of November 13, 1970; applications actually approved in December 1970.

APPENDIX II
Page 1

BREAKDOWN BY STATE

OF NUMBER AND AMOUNT OF GRANTS MADE UNDER

THE EMERGENCY SCHOOL ASSISTANCE PROGRAM

AS OF NOVEMBER 13, 1970

HEW region and State	Grants made	
	Number	Amount
REGION I--BOSTON:		
Connecticut	-	$ -
Maine	-	-
Massachusetts	-	-
New Hampshire	-	-
Rhode Island	-	-
Vermont	-	-
Total	-	-
REGION II--NEW YORK:		
New York	-	-
New Jersey	-	-
Puerto Rico	-	-
Virgin Islands	1	45,000
Total	1	45,000
REGION III--PHILADELPHIA:		
Delaware	-	-
District of Columbia	-	-
Maryland	2	653,363
Pennsylvania	9	349,892
Virginia	48	3,692,998
West Virginia	-	-
Total	59	4,696,253
REGION IV--ATLANTA:		
Alabama	57	4,143,047
Florida	57	7,126,565
Georgia	144	6,504,464
Kentucky	4	106,257
Mississippi	86	4,740,739
North Carolina	81	6,481,469
South Carolina	64	4,425,449
Tennessee	37	2,666,048
Total	530	36,194,038

HEW region and State	Grants made	
	Number	Amount
REGION V--CHICAGO:		
Illinois	-	$ -
Indiana	-	-
Minnesota	-	-
Michigan	-	-
Ohio	-	-
Wisconsin	-	-
Total	-	-
REGION VI--DALLAS-FORT WORTH:		
Arkansas	69	1,698,567
Louisiana	36	5,672,848
New Mexico	-	-
Oklahoma	9	265,137
Texas	86	6,688,369
Total	200	14,324,921
REGION VII--KANSAS CITY:		
Iowa	-	-
Kansas	-	-
Missouri	1	57,385
Nebraska	-	-
Total	1	57,385
REGION VIII--DENVER:		
Colorado	-	-
Montana	-	-
North Dakota	-	-
South Dakota	-	-
Utah	-	-
Wyoming	-	-
Total	-	-
REGION IX--SAN FRANCISCO:		
Arizona	-	-
California	2[a]	189,938
Hawaii	-	-
Nevada	-	-
Total	2	189,938
REGION X--SEATTLE:		
Alaska	-	-
Idaho	-	-
Oregon	-	-
Washington	-	-
Total	-	-
TOTAL	793	$55,507,535

[a]Reported by the Office of Education as having been made through November 13, 1970; grants were actually made in December 1970.

APPENDIX III
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GRANTS UNDER THE
EMERGENCY SCHOOL ASSISTANCE PROGRAM
SELECTED FOR GAO REVIEW

HEW region, State, and school district	Number of grants selected	How selected--certainty (C) or random (R)	Amount of grant
REGION III--PHILADELPHIA:			
Maryland:			
Prince Georges County Schools		C	$ 532,709
Dorchester County Schools		C	120,654
Total	2		653,363
Pennsylvania:			
Harrisburg City School District		R	50,723
Susquehanna Township School District		R	17,100
Total	2		67,823
Virginia:			
Norfolk City Schools		R	294,025
Dinwiddie County School Board		R	56,400
Powhatan County Schools		R	32,210
Total	3		382,635
Total Region III	7		1,103,821
REGION IV--ATLANTA:			
Alabama:			
Talladega County Board of Education		R	168,247
Phenix City Board of Education		R	74,312
Sylacauga City Board of Education		R	27,468
Total	3		270,027
Florida:			
Dade County Public Schools		C	2,121,905
Madison School Board of Education		R	50,000
Wakalla County Schools		R	9,000
Total	3		2,180,905
Georgia:			
Atlanta Public Schools		C	1,150,939
Crisp County School System		R	65,925
Appling County Board of Education		R	38,313
Carroll County Board of Education		R	28,800
Wilkinson County Board of Education		R	22,000
Montgomery County Board of Education		R	13,000
Bacon County Board of Education		R	6,000
Total	7		1,324,977
Kentucky:			
Jefferson County Public Schools		R	32,700
Fulton County Board of Education		R	4,430
Total	2		37,130
Mississippi:			
Jackson Municipal Separate School District		C	1,300,000
Hinds County Public Schools		R	190,000
Harrison County School District		R	43,000
Houston Municipal Separate School District		R	20,000
Total	4		1,553,000
North Carolina:			
Winston-Salem City/Forsyth County Schools		R	250,738
Columbus County Schools		R	118,900
Hoke County Board of Education		R	89,240
Tarboro City Board of Education		R	43,832
Total	4		502,710

HEW region, State, and school district	Number of grants selected	How selected--certainty (C) or random (R)	Amount of grant
REGION IV--ATLANTA (cont.):			
South Carolina:			
Greenville School District		R	$ 359,998
Dillon County School District No. 2		R	75,000
Orangeburg County School District No. 7		R	25,568
Total	3		460,566
Tennessee:			
Memphis City Board of Education		C	992,531
Maury City Board of Education		R	1,500
Total	2		994,031
Total Region IV	28		7,323,346
REGION VI--DALLAS-FORT WORTH:			
Arkansas:			
Hope School District		R	61,400
Luxora School District		R	24,000
Watson School District		R	11,300
Drew-Central School District		R	4,100
Total	4		100,800
Louisiana:			
Orleans Parish School District		C	1,953,400
Jackson Parish		R	42,000
Total	2		1,995,400
Oklahoma:			
Ardmore City Schools		R	26,000
Checotah Indapendent School District No. 19		R	8,515
Total	2		34,515
Texas:			
Houston Independent School District		C	2,025,000
San Antonio Independent School District		C	1,165,300
West Orange Cove Consolidated Independent School District		R	49,080
Buffalo Independent School District		R	14,550
Total	4		3,253,930
Total Region VI	12		5,384,645
REGION VII--KANSAS CITY:			
Missouri:			
New Madrid School District R-1		C	57,385
Total	1		57,385
Total Region VII	1		57,385
REGION IX--SAN FRANCISCO:			
California:			
Pasadena Unified School District		C	115,000
Inglewood Unified School District		C	74,938
Total	2		189,938
Total Region IX	2		189,938
TOTAL--ALL REGIONS	50		$14,059,135

Note: Criteria used in making selections:

1. Grants of $1 million or more were selected--including the grant to Memphis in the amount of $992,531.

2. At least two grants in *each State* were selected--if the State had received only one or two grants all grants were selected.

3. All other grants were selected at random--within each State the grants were listed from high to low dollar amounts so that a mix of both would be selected.

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APPENDIX IV
Page 1

United States Senate
SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY
(CREATED PURSUANT TO S. RES. 359, 91ST CONGRESS)
WASHINGTON, D.C. 20510

November 24, 1970

Mr. Elmer B. Staats
Comptroller General of the
United States
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Staats:

This letter is to request that the General Accounting Office make a review of the implementation of the Emergency School Assistance Program by the Office of Education, Department of Health, Education, and Welfare.

The program, which is presently funded in the amount of $75 million by the Office of Education Appropriation Act, 1971, Public Law 91-380, dated August 18, 1970, provides financial assistance to local educational agencies to meet special problems incident to desegregation in elementary and secondary schools. Statutory authority to carry out the program is contained in six separate acts which are cited in the appropriation act.

The Committees of Congress are currently considering a bill to provide for a single authorization for the program to be known as the Emergency School Aid Act of 1970. The $75 million is the first part of the President's announced plans to ask for a total of $1.5 billion for the program over the next 2 years.

Staff members of the select committee have met recently with representatives of your office to discuss this request and have furnished them with a suggested outline of areas to be covered in the review. It was agreed that during the first phase, the review would be limited to an evaluation of the regulations and procedures established to implement the program. This work is to be performed primarily at the Office of Education headquarters in Washington, D.C., and at each HEW regional office where financial grants have been made. It is contemplated that following the report on this review, follow-on work will be performed at the various school districts included in the review.

It is requested that you select 50 projects for review. At least one project in each State which has received funds, as well as a mix of both large and small grants, should be examined.

It is requested that a report of your findings be provided by January 26, 1971, in order that it may be of assistance in the deliberations on the Emergency School Aid bill. The committee staff will be pleased to meet with your representatives at any time during the conduct of the review should any problems arise.

Sincerely,

Walter F. Mondale
Chairman

THE EMERGENCY SCHOOL ASSISTANCE PROGRAM

REMARKS BY SENATOR WALTER F. MONDALE

Mr. President, I am releasing today a study by the General Accounting Office of the administration of the Emergency School Assistance Program. This study, along with the report of six civil rights organizations which was released last November, and supplemented by a Committee staff investigation, together unfortunately demonstrate that in the administration of ESAP there has been wholesale, tragic and callous disregard for the needs of school children in desegregating school systems. Grants were made to school districts in violation of civil rights laws and of HEW's own program regulations. The purposes of the program were forgotten and the intent of Congress was dismissed, as $75 million was distributed in return for token applications to desegregating school districts.

The Emergency School Assistance Program was presented to Congress as an emergency program to help make integration successful, to provide quality education for black, white, Spanish-surnamed and other students, and to develop understanding and community acceptance among students, teachers, parents and school administrators in newly desegregating school districts. It is the first installment of President Nixon's proposed $1.5 billion program to aid both voluntary and legally desegregating school districts. So in a sense it is a demonstration. But I am sorry to say it has been a demonstrable failure.

First it was supposed to have been a nationwide program. When Congress appropriated the $75 million it included an amendment designed to make the program a nationwide effort to help desegregated school districts. The amendment stated that any school district which was desegregating whether under state or federal legal requirement would be eligible for funding. The Administration has failed to comply with the spirit, if not the letter, of the amendment.

Except, in the case of one state, Pennsylvania, it is my understanding that school districts were declared ineligible unless they were desegregating either under Title VI of the Civil Rights Act of 1964 or under federal court order. More than a dozen districts in California, for example, that should have been eligible for funds and which initially had funds allocated to them, were subsequently declared ineligible because they were not under court order. Among these districts were Berkeley and Riverside, California, which had desegregated their schools voluntarily.

Because they undertook voluntarily to desegregate their schools, other districts across the country that desperately need help to make integration successful, were denied funds. More than 90% of the ESAP appropriations allocated to local educational agencies went to southern states. These states are of course in need of assistance. But that assistance was spread so thin, to so many school districts, that only about $18 has been spent for each minority group pupil.

Second, it was supposed to fund projects that would make integration a successful educational experience.

Instead, in an effort to get the money out last September and October, grants were made without the slightest regard for program content, for the merits of the proposals made by applicant school districts or even for whether school districts were eligible for funds.

Contrary to HEW's own regulations, applications were approved which, on their face, contain proposals having nothing whatever to do with the problems of desegregation. Most of the applications contained only the most cursory descriptions of how the money was to be spent.

Jackson, Mississippi was the first grant awarded. It was awarded 1.3 million dollars by telegram from the acting Commissioner of Education four days before HEW even received Jackson's application.

One district, Memphis, Tennessee, submitted an application stating its desire to undertake special "curriculum revision programs." In order to revise its curriculum, according to GAO, "the district proposed to employ one area specialist, one aide, and one truck driver; to purchase one truck with trailer hitch; to renovate the main cage of the trailer; to acquire domestic and wild animals and necessary

equipment, materials, feed and supplies"; in order to maintain a mobile zoo at a total cost of $14,979. The same application also proposed to purchase $25,000 worth of newspaper subscriptions.

To make matters worse, the HEW Program Officer personally assisted the Memphis school district in preparing its application and in revising the project descriptions in the application.

With respect to the Atlanta Regional Office GAO states in its report that—

"In our opinion, 25 of the 28 applications included in our review did not contain, contrary to the regulations, comprehensive statements of the problems faced in achieving and maintaining desegregated school systems or adequate descriptions of the proposed activities designed to effectively meet such problems. In addition, the applications did not adequately explain how the proposed activities would meet the special needs of the children incident to the elimination of racial segregation and discrimination in the schools. In only a few cases did the applications show the basis for the dollar amounts requested for the proposed activities."

GAO's findings were confirmed by an investigation undertaken by the staff of the Select Committee on Equal Educational Opportunity. With respect to the Jackson, Mississippi application the HEW Regional Director in Atlanta stated to a committee investigator "all I did was sign off." Another regional official said, "We reviewed it when it came in and we rejected it, but Washington had already approved it." The same official said that his name was listed on the jacket covers as having approved applications that he had not approved and that he simply took directions from Washington that the applications had to be approved.

The committee staff investigation found that in Charleston, South Carolina, $300,000 of its $441,000 grant was approved for the purchase of Ampex television equipment. HEW's own post-grant field review of the Charleston project as reported in a memorandum of December 14 states:

"It appears that the program . . . is not dealing with emergency problems resulting from desegregation of school. . . . It appears that this grant is not dealing with an emergency situation . . . The project does not relate to the problems resulting from desegregation."

An HEW employee who signed off, approving Charleston's application, told the select committee investigator, "This is a rubber stamp, blank check operation. I don't know what's in any of the applications."

Third, ESAP was intended and presented to Congress as a "project grant" program under which money would be awarded solely on the basis of the needs of individual school districts. The GAO report demonstrates that the program was operated on a formula grant basis under which each school district was told the amount of funds for which it was eligible.

There was a striking correlation between the amounts of funds for which school districts were told they were eligible and the amounts of the grants made. Grants to 20 of the 28 Atlanta school districts were within 5% of the established funding levels, within 2% in 16 districts and within 1% in 11 of these districts. Thus, rather than concentrating funds on the basis of need where there was some promise of a result the amounts allotted to school districts within the 24 states averaged about $18.65 for each minority group child.

Fourth, it has been demonstrated now in two independent reports that school districts with both known and undisclosed civil rights violations were funded in violation of law.

As I indicated earlier, HEW determined the amount of funds for which school districts were eligible under a formula. That formula was released to HEW's regional offices in a memorandum dated August 24, 1970. HEW began funding projects three days after this formula was released. 1318 school districts were, at that time, determined to be potentially eligible for ESAP funds. In spite of this, that same August 24 memorandum discloses that—

HEW lacked information as to whether 343 of those districts were in compliance with Title VI or court orders;

HEW had information indicating a bad civil rights compliance record on 394 districts; and

HEW had no information on another 247 districts.

Thus at the time HEW began funding from its list of 1318 potentially eligible school districts, it either lacked sufficient information or had file records disclosing bad compliance records in 984 or 75% of the 1318 target districts.

Although HEW officials in Washington told GAO that applications were to be reviewed by both regional and headquarters' civil rights personnel for compliance with civil rights requirements, GAO found that in Atlanta:

"Regional officials told us that they had accepted, in the absence of indications to the contrary, the assurances of the school districts that they were not (1) discriminating on the basis of race in teacher and professional staffing patterns, (2) assigning children to classes on the basis of their being members of minority groups, or (3) engaging in the transfer of property or services to any nonpublic school or school system which practiced racial discrimination."

In one Alabama school district the school superintendent assured HEW on November 4 that there was no discrimination against teachers in the school district. The district was granted $168,247 on November 5. Yet, the Justice Department had been investigating complaints filed by the National Education Association since September. On January 8, 1971, two months after the ESAP grant was approved, Justice's investigation resulted in a court order requiring reinstatement of the dismissed teachers.

The GAO report discloses that school districts with civil rights complaints under review at HEW and in the Justice Department were awarded funds without regard to those violations. 19 of the 28 school districts examined in the Atlanta region were under court-ordered desegregation plans. HEW's Office for Civil Rights told GAO it was not responsible for investigating complaints against those 19 court-ordered districts. In two of these districts the HEW Atlanta office had forwarded civil rights violations complaints to the Justice Department before approval of the ESAP grants. No attempt was made in these two cases or in other cases to determine whether complaints were justified or what the status of the Justice Department's reviews were.

Last November the six civil rights groups that studied ESAP stated in their report that 179 of 295 ESAP-assisted school districts which they visited were engaged in civil rights violations that rendered them clearly ineligible for grants. In 87 other districts they found sufficient evidence to question eligibility. In only 29 of the 295 districts did they find no evidence of illegal civil rights practices.

Specifically, they found the following clear violations in ESAP districts that had received funds:

94 districts with segregated classrooms or facilities.
47 districts with segregated or discriminatory busing.
62 districts without desegregated faculty or staff.
98 districts that had dismissed or demoted black teachers.
12 districts in violation of HEW or court-ordered student assignment plans.
13 districts that have assisted private segregated academies.

In appropriating $75 million for the ESAP program, Congress specifically required that any school district which had transferred public property or rendered services to a private segregation academy should be ineligible for funds. Despite this provision and despite HEW's own determination that a majority of 14 Louisiana school districts had transferred property or provided transportation to private schools under state law, HEW certified these districts as eligible if there was no indication of civil rights violations other than these transfers.

Let me cite another example:

HEW was notified by the Select Committee and by the Washington Research Project on September 3, that the Jackson Mississippi School District had transferred textbooks to private segregation academies about a week before Jackson filed its ESAP application. Jackson's ESAP application contains an assurance signed by the applicant as follows:

"The applicant is not engaged in the gift, lease, or sale of property or services, directly or *indirectly* to any nonpublic school or school system, which, at the time of such transaction practices discrimination on the basis of race, color or national origin, where such gift, lease, or sale was for the purpose of, or had the effect of, encouraging, facilitating, supporting or otherwise assisting the operation of such school or school system as an alternative available to non-minority group students seeking to avoid desegregating public schools."

The Jackson School District gave that assurance in its application one week following the transfers of textbooks. The application also requires that the applying school district state the name and address "of any non-public school or school system" to which property directly or indirectly has been transferred.

Jackson was the first school district funded under ESAP.

Following the report of this transfer to HEW, a truck arrived at the segregation academies to which the textbooks had been transferred, collected the books and delivered them to the State Schoolbook Depository. The books were then delivered by the State Schoolbook Depository back to the private schools.

About a month later, after looking into the situation, HEW notified Jackson that it was still free to spend ESAP funds.

Fifth, contrary to regulations, few districts established biracial and student advisory committees. The regulations require that these be consulted during the application process and with respect to policy matters arising in the demonstration and operation of ESAP projects. Fourteen of the 28 school districts studied by GAO in the Atlanta region failed to comply with the regulations establishing biracial advisory committees. Applications filed by 21 of the districts did not contain assurances that a student advisory committee would be formed in each secondary school affected by the ESAP project.

Sixth, again in violation of law, at least two applications were approved which, with the most cursory examination, would have disclosed that ESAP money was to be used to supplant nonfederal funds available to the school district. In one case HEW approved $48,000 for the construction of mobile classrooms already under contract with the school district a month before the grant was made.

Mr. President, this is a tragic story. It adds up at the very least to a classic case of bureaucratic negligence and incompetence. But more important, school children simply have been forgotten at a time when we need above all to fund an educational process designed to bring students, parents, and teachers of all races and backgrounds together in quality, integrated schools. Instead we have spent $75 million in a manner that may well result in a demonstration that school desegregation will fail.

I hope that as we consider the school integration legislation now pending in Congress we can somehow recognize that integration implies more than just the mixing of children behind school doors. It can be successful only if there are programs designed to emphasize those human elements—the warmth, receptivity, sensitivity, and respect which children and adults must have for each other if we are to get along together in our society. I believe that integration, not mere desegregation, is an indispensable element in our education process. But it won't work, indeed it will fail, unless federal aid designed to help integration is directed toward the kind of culturally sensitive programs designed to foster human understanding.

THE EMERGENCY SCHOOL ASSISTANCE APPROPRIATION (PUBLIC LAW 91–380)

Emergency School Assistance. For assistance to desegregating local educational agencies as provided under Part D of the Educational Professions Development Act (Title V of the Higher Education Act of 1965), the Cooperative Research Act, title IV of the Civil Rights Act of 1964, section 807 of the Elementary and Secondary Education Amendments of 1965, section 402 of the Elementary and Secondary Amendments of 1967, and title II of the Economic Opportunity Act of 1964, as amended, including necessary administrative expenses therefor, $75,000,000: Provided, That no part of any funds appropriated herein to carry out programs under title II of the Economic Opportunity Act of 1964 shall be used to calculate the allocations and proration of allocations under section 102 (b) of the Economic Opportunity Amendments of 1969: Provided further, That no part of the funds contained herein shall be used (a) to assist a local educational agency which engages, or has unlawfully engaged, in the gift, lease or sale of real or personal property or services to a nonpublic elementary or secondary school or school system practicing discrimination on the basis of race, color, or national origin; (b) to supplant funding from non-Federal sources which has been reduced as the result of desegregation or the availability of funding under this head; or (c) to carry out any program or activity under any policy, procedure, or practice that denies funds to any local educational agency desegregating its schools under legal requirement, on the basis of geography or the source of the legal requirement.

(163)

EXCERPT FROM SENATE APPROPRIATIONS COMMITTEE REPORT (Report No. 917, 91st Congress, 2d Session)

OFFICE OF EDUCATION

EMERGENCY SCHOOL ASSISTANCE

1970 appropriation	None
Supplemental budget estimate (S. Doc. 91–83)	$150, 000, 000
House allowance	Not considered
Committee recommendation	150, 000, 000

The committee recommends $150 million, the same as the supplemental estimate, to meet the additional costs which will be encountered by about 1,000 school districts which are expected to desegregate by September 1970. The request for these funds was transmitted to the Senate on May 25, 1970, and therefore was not received in time for consideration by the House.

The supplemental request is the first part of the President's announced plans to ask for a total of $1.5 billion for this purpose over the next 2 years. The $150 million hs been requested as a supplemental in order to make assistance available—on an emergency basis—this summer so that desegregating school districts will be able to maintain educational quality and minimize disruption of the educational process during the desegregation period which must be underway by this fall.

Under the committee allowance, funds would be available in the form of comprehensive grants to desegregating—and recently desegregated—school districts for the purpose of hiring additional teachers and teacher aides, providing guidance and counseling and other direct services to school children, revising curriculum, purchasing special equipment, undertaking minor remodeling, supporting community programs and financing other additional costs which will contribute to carrying out a successful desegregation plan.

The program funds requested and allowed by the committee would remain available for obligation until September 30, 1970. Administrative support would be available for a full year since many of the projects funded would be operational during the coming school year and will require administrative assistance throughout this period.

A significant share of the appropriation, as much as $100 million, will be expended under title II of the Economic Opportunity Act. This will require a delegation of authority from the Office of Economic Opportunity to the Department of Health, Education, and Welfare. Such delegations are allowable under the Economic Opportunity Act. The remainder of the appropriation, about $50 million, will be expended under authorities vested in HEW and the Office of Education. Administration witnesses testified that use of these several authorities was necessary in order to provide the broad range of services required by desegregating school districts. They indicated that this arrangement represents a one-time, temporary expedient to deal with the immediate problems faced by schools this summer and that the Emergency School Aid Act of 1970, which was introduced in the Senate on May 26, would form the basis for a more permanent future authority. Any further funding for assistance to desegregation by the schools will, according to departmental witnesses, be requested as part of the regular, 1971 and 1972 budgets following congressional action on the new legislation.

In recommending an appropriation of $150 million to be applied under so many different authorities, the committee wants to be certain that there is a clear record of congressional intent as to the purposes for which the appropriation is made and the manner under which it is to be applied. First, consistent with recommendations of the administration, the funds shall be available, on a project grant basis, to assist any public school district under either a court order or with an approved plan to desegregate beginning with the school term that begins in the fall of 1970. Further, the school districts which have desegregated during the last 2 years under either a court order or an approved plan shall also be eligible. All of the funds are to be made available to deal with problems resulting from court orders or plans to overcome segregation.

Under no circumstance are any of the funds intended to be available to overcome racial isolation or racial imbalance.

As indicated above, the intent of the appropriation is to provide a broad range of financial and technical assistance, but the character and degree of assistance required shall, in every instance, be a matter of local initiative and determination.

Further, the committee believes strongly that these funds must not be used to finance directly or to encourage massive or excessive busing of students. Any transportation of students covered by this appropriation must be a part of either the court order or the approved desegregation plan.

The entire program of emergency school assistance would be administered by the Office of Education and the Department of Health, Education, and Welfare.

A proviso is incorporated in this measure stating that no part of any funds appropriated in this measure shall be included as part of the amounts appropriated for the purpose of determining allocations for each purpose set forth in clauses (1) through (8) of section 102(b) of the Economic Opportunity Amendments of 1969. The purpose of this limitation is to make clear that this appropriation is intended to have no effect whatever on the earmarking, allocation, and proration of OEO funds which would be required in the absence of this appropriation. The administration of OEO programs would otherwise be seriously disrupted in view of the lateness in the fiscal year. Further, it is not the intent of this measure, in any way, to inhibit or limit the authorities vested in the Director of the Office of Economic Opportunity under section 616 of the Economic Opportunity Act with respect to the use of funds made available for carrying out programs under that act. On the other hand, this language in no way changes the intent or effect of the provisions of section 102(b) as to all other appropriations for carrying out the provisions of the Economic Opportunity Act of 1964.

[From the Congressional Record, June 22, 1970]

EXCERPTS FROM SENATE DEBATE

Mr. PELL. Mr. President, as chairman of the Education Subcommittee of the Committee on Labor and Public Welfare, I am aware of and concerned about the special problems of school districts carrying out desegregation plans. Indeed, the subcommittee is presently considering legislation to deal with these very problems. It is my hope that, if possible, the Committee on Labor and Public Welfare will bring legislation on this matter before the Senate this session.

My concern with the appropriation proposed by the Committee on Appropriations stems from the fact that this recommendation is before the Senate without proper legislative authority, and without due consideration by the substantive committee charged by the rules of the Senate with responsibility over the subject matter of the appropriation.

At this time, rather than raise a question respecting a point of order against the appropriation, I would prefer having a clarification of this matter. I choose this procedure, because it would appear that if the intent of the committee is made more precise than has already been expressed, it is possible that a point of order would not be necessary. Therefore, I would like to express my support for the Senator from Minnesota (Mr. Mondale), in his efforts to pinpoint the situation and to make a brief statement outlining the scope of the activities which would be funded under the appropriation in a manner consistent with the authorizing legislation, thereby bringing the committee amendment within the limits of the rules of the Senate.

First, I would hope that the manager of the bill would make absolutely clear that the activities funded from the appropriation will be only those authorized by substantive law, in accordance with the terms of the authorizing legislation, and without regard to the statement of intent on page 22 of the report of the Committee on Appropriations on this bill. Specifically, the report states that these funds will be used for hiring teachers without limitation. A review of the authorizing legislation indicates that schoolteachers may be hired with Federal funds only as a part of a specific project authorized by law.

Second, I would hope that it would be made clear that this appropriation does not constitute a precedent. Otherwise, the whole function of substantive committees will be subverted by the appropriation process. It is my belief that the Senate ought not lend itself to a procedure too often used by this administration, whereby the normal rules are bypassed in favor of shortcuts for political reasons. If this administration finds that it can, as a matter of course, come to the Appropriations Committee for emergency appropriations whether or not an emergency exists, there will be no reason for submitting legislation to substantive committees. If we accede to this procedure, Congress will, in domestic affairs, have divested itself of its responsibility in much the same way as has been the case in the past with our Nation's defense.

I would address this question to the Senator from West Virginia, as to whether or not he can give up these two assurances: One, that the money would be spent only on programs that are already authorized by substantive law.

Mr. BYRD of West Virginia. The answer is "Yes."

Mr. PELL. Second, this would not be considered as a precedent for future legislation in this field.

Mr. BYRD of West Virginia. It would not be, as I understand it, because we have been advised by the General Counsel of the Department of HEW that this request has already been authorized, and the authorization sources are set forth in the bill, on page 14.

Mr. PELL. Coming to those sources, with respect to title II of the Economic Opportunity Act, $100 million, and then the other $50 million from title IV of the Civil Rights Act, the Cooperative Research Act, the dropout prevention program in the Elementary and Secondary Education Act and the Education Professions Development Act, I wonder whether the Senator could inform us—or if it could be submitted later in the RECORD—as to how much money is to be appropriated

under each of these programs. I think we should know the authority under which we are appropriating funds.

Mr. BYRD of West Virginia. In answer to the question by the able Senator from Rhode Island (Mr. Pell), $115 million would be for special educational personnel and students' programs, $15 million for community participation programs, $17.9 million for equipment and minor remodeling, and $2.1 million for Federal administration and technical assistance, making a total of $150 million.

Mr. PELL. I should like to press the point as to the source of the funds. Of the $50 million that comes out of the four different authorities, is there anywhere available a breakdown of how much will come out of each of those authorities?

Mr. BYRD. of West Virginia. This precise information was not supplied to the committee. The Department of Health, Education and Welfare has asked for some flexibility in this regard, but for nothing that would exceed the existing authority as set out in the bill.

Mr. PELL. The thing that concerns me is to leave to HEW the authority to take the whole $50 million out of one of the 4 programs or to divide it up on a fairly equitable basis. I think we are being very generous with the authority we give the executive branch. How does the Senator feel about that?

Mr. BYRD of West Virginia. As I have said, the Department wanted to have the flexibility that it thought it would need, and the basic authorizing legislation has been passed heretofore. The appropriations request is grounded in the legislative authority that has already been granted by Congress and would come from several different authorities as set forth in the bill and detail in the justification.

This is the first part of the $1.5 billion which the President has envisioned as being needed in his program for the desegregation of public schools, and this $150 million would come out of that, leaving $1.350 billion as an amount yet to be authorized and requested. So we can either appropriate it now or we can appropriate it later.

Mr. PELL. I am concerned with the intent of Congress in passing these authorization items, for specific programs. If the money can be appropriated under the authority of one program and not all four, it would mean that we give the administration far to much discretion to gut a program. I would like some sort of assurance, as chairman of the authorizing subcommittee, to the effect that the money would be fairly evenly used in all four programs.

Mr. BYRD of West Virginia. I think the money would be evenly withdrawn. It would be spread around among the various authorities, and I do not think any one of the authorities would be gutted, to use the able Senator's term. This was the testimony the committee received from the Department and this is what their justification implies.

Mr. MONDALE. Might I pursue the questioning offered by the Senator from Rhode Island to the floor manager of this bill. Do I correctly understand that the floor manager is not in a position to advise the Senate as to the sources from which this $150 million would be obtained or the amount of money that would be taken from any such sources, whatever they might be?

Mr. BYRD of West Virginia. The $100 million would come out of title 2 of the OEO authority, and the remaining $50 million would be spread out through the programs I have already enumerated—community participation program, equipment and minor remodeling, and Federal administration and technical assistance, under the Office of Education. Let me state further that funds would be allocated on the basis of approved applications—under this circumstance, absolute determination is difficult to ascertain at this time.

Mr. MONDALE. My question is not directed at this point to the authorities through which this appropriated money would be spent, but, rather, to the question of the sources from which the $150 million would be derived.

Mr. BYRD of West Virginia. I think I have already indicated that in answer to the earlier question by the Senator from Rhode Island.

Mr. MONDALE. What was the answer?

Mr. BYRD of West Virginia. The answer was that we were not supplied with that information and until applications for the funds are received and approved by the Commissioner of Education this is a determination that is difficult to make. However, an estimate of needs would indidate that funds would come from the various authorities set forth by the Department.

Mr. MONDALE. We do not know where this $150 million will be found?

Mr. PELL. $50 million.

Mr. MONDALE. $50 million or $150 million?

Mr. PELL. We do not know where the $50 million comes from. We know where the $100 million comes from. The $50 million is a sort of shell game.

Mr. MONDALE. Can the Senator advise me as to how much of the $150 million would be spent through part D of the Education Professions Development Act?

Mr. BYRD of West Virginia. I beg the Senator's pardon for not being able to respond promptly. If I recall correctly—the Senator may be in a position to correct me if I am wrong—the first indication I had had from the Senator that he intended to raise any questions whatsoever about this matter came on the day we were marking up the bill in the full committee.

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Mr. MONDALE. Can the Senator tell me how much will be spent through the Cooperative Research Act?

Mr. BYRD of West Virginia. As I indicated earlier, we just do not have that breakdown with respect to the authority. If the Senator is going to go down through each item—what authority is there from, what authority is that from—as I have already indicated, the committee does not have that information and it is contingent upon approved applications.

Mr. MONDALE. In other words, we do not know from which programs the $150 million will be derived, nor do we know in what amounts the $150 million will be spent through the respective authorities.

Mr. BYRD of West Virginia. We only know that the Department indicated it wanted some flexibility, and that it would be spread out in an even and fair manner. That is all I can say to the Senator.

Mr. MONDALE. Thus, it would be fair to say, since we do not know where the money is coming from, or what amounts will be spent under which titles, that we have given them all the authority they could possibly ask for.

Mr. BYRD of West Virginia. That is the Senator's judgment, and I would not challenge it.

Mr. MONDALE. Mr. President, I am pleased to say that the three amendments which I shall shortly be calling up are supported by the administration in a letter which I received today from Secretary Finch which I ask unanimous consent to have printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., June 19, 1970.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: This is in response to your request for the Department's views on the proposed amendments 702, 703 and 704 to the Second Supplemental Appropriations Bill.

These amendments refer to the appropriation of $150 million included in the Bill for emergency assistance to desegregating school systems.

Amendment No. 702 provides that no funds may be extended to school districts which have transferred property or services to private schools that practice discrimination on the basis of race, color, or national origin.

Amendment No. 703 prohibits the use of appropriated funds to supplant funding from non-Federal sources which has been reduced as a result of desegregation. Also, the amendment provides that assistance under the appropriation could only be used to supplement State and local funds which would otherwise be made available to support educational programs in the affected school districts.

Amendment No. 704 would make clear that any school district in the process of implementing a Federal court order for desegregation would be eligible for assistance under the appropriation. *In addition, school districts desegregating pursuant to a State court order would be eligible for assistance providing that such orders are being implemented and that as a minimum they provide for the elimination of practice prohibited under Title VI of the Civil Rights Act of 1964.*

The Department believes that the amendments are consistent with the purpose of the appropriation, which is to assist school districts meet their responsibilities under the law.

With kind regards, I am,
Sincerely,

ROBERT H. FINCH, *Secretary.*

Mr. PELL. Will the Senator from Minnesota yield?

Mr. MONDALE. I yield.

Mr. PELL. My arithmetic is not of the best but I did get some figures which I think are accurate. The problem is that the $150 million is not divided up on a relatively even basis. It could, I suppose, completely overpower at least two of the programs for which the appropriation would be made because the total appropriation for the dropout prevention program is $5.8 million and the total appropriation for planning and evaluation is $13 million. Thus, I think that the Senator from West Virginia can see that, if these funds are appropriated for this purpose instead of that authorized, those programs could well be wiped out. That is why I think we are giving greater authority to the executive branch and have abnegated the congressional responsibility.

There are two reasons why I think we go along with it. One, we recognize that there is a real problem in moving ahead with desegregation this coming school year; and, second, we think the authorizing subcommittee will handle the remainder of the bill, the other $1.350 billion in the coming week—we hope.

But it is, to my mind, wrong and bad procedure, one which I believe a point of order could be made to—although I do not intend to do that, because the only ones who will suffer will be the young people in our Nation's schools.

Mr. STENNIS. Mr. President, would it be convenient for the Senator from Minnesota to yield to me so that I may ask a few questions of the Senator from West Virginia? Inquiry has been made as to where the authorization has come from, and now I want to ask a few questions as to where the money is going. So that we can get it in the record in the same place.

Mr. MONDALE. That is correct. I asked the same questions and I will be glad to listen to the answers.

Mr. STENNIS. The Senator has already asked those questions?

Mr. MONDALE. No. Proceed. I am glad to yield to the Senator from Mississippi.

Mr. STENNIS. Mr. President, I thank the Senator. Is it true that the justification was based entirely on the Southern States and the so-called border States?

Mr. BYRD of West Virginia. Mr. President, I cannot recall any exceptions.

Mr. STENNIS. What was said about the rest of the $1.5 billion? Are the Southern and border States going to get all of the $1.5 billion? I have not heard that point covered.

Mr. BYRD of West Virginia. Mr. President, my impression is that they will get most of the rest of it, but that it would not be confined to that.

As I understand it—and others were present at the hearings—this is going to be utilized to treat the problems of de jure segregation. As I further understand it, most of that problem is confined to the Southern and border States. However, nothing more than the $150 million we are now considering has been authorized and the $1.350 billion will have to be approved by the Congress.

Mr. STENNIS. Did any of the witnesses, according to the Senator's information, actually come out and say that the $1.5 billion was going to be spent solely on the so-called de jure segregation question or situation? In fact, I cannot conceive of plans to give the South $1.5 billion and not give any to any other area of the country.

I see no signs whatsoever that they are trying to desegregate any other part of the country than the South. So I think that we ought to have an understanding here as to where this money is going and what the pattern is for the spending of the rest of the $1.5 billion.

Mr. BYRD of West Virginia. Mr. President, I do not think that the witnesses stated that the moneys would be used for that purpose only. I do not think that this is the intention.

Mr. STENNIS. The Senator is talking about the $150 million or the $1.5 billion?

Mr. BYRD of West Virginia. I am talking about the $1.5 billion.

Mr. STENNIS. And there was no suggestion that a part of that money would be spent in the North and East and the Far West, and, if there ever was, under what conditions it would be spent.

My point is that I see no real plan to desegregate the schools outside the South. However, I do see evidence of plans for about $1 billion to go to those schools, whether they desegrate or not. That is the point I raise.

Of course, the Senator agrees that this is relevant?

Mr. BYRD of West Virginia. It surely is; yes.

Mr. STENNIS. Mr. President, I do not believe that this plan has gotten beyond the newspaper stage, except for the $150 million.

Mr. BYRD of West Virginia. I think the Senator is right. The $1.350 million would have to be authorized by the legislative committee; and I think they would have to go into it very thoroughly.

Mr. STENNIS. I think the Senator is correct. But I wanted to inquire about the plans so far as they are developed now. As a matter of fact, I have the record here. The Department of Justice has been in on six cases since 1964 outside of the Southern and the border States.

Mr. BYRD of West Virginia. Practically speaking, that is the impression that I have.

Mr. STENNIS. The HEW has really proceeded in only 14 cases outside of the Southern and border States and has not cut off money for any schools outside the South as yet. That is my information. There has not been a real cutoff.

So I want to know now if they are going to get a part of this $1.5 billion or are going to be required to desegregate or continue as they are at the present time.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. Mr. President, I yield first to the Senator from Nebraska and will then yield to the Senator from Colorado.

Mr. HRUSKA. Mr. President, that subject was touched upon in the President's message of March 24, 1970.

I read those words:

"In order to give substance to these commitments, I shall ask Congress to divert $500 million from my original budget request for other domestic programs for fiscal year 1971, to be put instead into programs for improving education in racially impacted areas, North and South. And for assisting school districts in meeting special problems incident to court ordered desegregation for fiscal year 1972, I have ordered that $1 billion be budgeted for the same purposes."

The bill authorizing the $1.5 billion has not been considered by Congress. It will be for Congress to decide if it is necessary to limit or to expand the purposes for that requested authorization.

No one can say with absolute certainty to what uses these moneys will be put, until the authorizing legislation has been enacted.

We do have an explanation of what the President's ideas on the subject are, and what he proposes. But, it is Congress that disposes, and we do not know what that disposition will be.

Mr. STENNIS. Mr. President, I do not want to take too much of the Senator's time. I will conclude in a moment, if I may continue.

Mr. President, that was my point. It has never been said definitely by the President or by Congress where this money is going or whether they are going to require these schools to desegregate.

We know what they will require in the South. But the President has never said that he will require them to desegregate in the North. He says it will be used for the benefit of schools in racially impacted areas.

Mr. HRUSKA. North and South.

Mr. STENNIS. The Senator is correct. So that means that in Chicago, the schools are racially impacted, I suppose. When we talk about 80 percent of the Negro students there who are attending schools that are between 99 percent and 100 percent Negro racial composition, I judge that is racially impacted. They would be eligible for this money. That is my point.

There is no plan to desegregate those schools, so far as the Federal Government is concerned. My prediction is that we will be asked to vote the $1.5 billion here for the benefit of schools generally, without any requirement whatsoever for desegregation of the schools. That is the point I make.

I just want to bring it out. I thank the Senator very much for yielding.

Mr. MONDALE. Mr. President, I thank the Senator from Mississippi. I agree with the Senator's observation about the reach of this $150 million.

In its presentation before the Appropriations Subcommittee, the administration said that the $150 million requested in this supplemental appropriation would provide immediate assistance to the approximately 994 de jure school districts in 17 Southern and border States which recently developed and which must develop its desegregation plans by September 1970.

I see no reason for limiting the scope of this matter to any such definition.

My third amendment, No. 704, would assure that school districts desegregating under legal requirement across the Nation would be eligible for assistance under this appropriation.

Mr. STENNIS. Mr. President, I commend the Senator. It was on my motion that the language in the report which applied to the South and the border States alone was stricken. I made the point that we had no right to limit the application of this money to any area.

I did point out with respect to justifying the expenditure of this money for the benefit of any schools that there are no plans now to do anything about desegregating any schools except in the South or maybe the so-called border States.

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Mr. MONDALE. Mr. President, we will have an opportunity to vote on that measure in my third amendment, which I hope very much will help to give this appropriation a national effect.

May I say that the proposed legislation for assisting desegregating school districts, which is before the Education Subcommittee ably chaired by the Senator from Rhode Island (Mr. Pell), is now under serious consideration.

Speaking for myself, I would very much hope that some of the thrust in terms of both this appropriation and the proposed legislation can to be directed on a national basis.

Mr. STENNIS. If they desegregate, I agree with the Senator.

Mr. MONDALE. We are very desirous, or at least I am very desirous, that the effort we are now undertaking be national in character and not limited to any one area. My amendment, number 704, seeks to make these funds available to any school districts desegregating under law—regardless of their location or the source of the legal requirement.

Mr. STENNIS. I agree they are entitled to the money if they are desegregated. I say the plan is they are going to give it to them if they are desegregated or not, if they are in racially impacted areas.

Mr. MONDALE. I thank the Senator for his observations.

Mr. PELL. Mr. President, will the Senator yield?

Mr. MONDALE. I yield.

Mr. PELL. Under the definitions of the objectives of S. 3883, the bill introduced by the senior Senator from New York (Mr. Javits) and cosponsored by me, the definitions do not apply to any geographical area, just North, South, East, and West, which, when met, would bring in eligibility for funds under this act.

The point that worries me is that once the bill has been enacted, we leave it to the wisdom and discretion of the Secretary of Health, Education, and Welfare as to how he allocates the money, and he can allocate it all in one State or in one section of the country, if he wishes. The amendment of the Senator from Minnesota spreads it around a bit more effectively.

Mr. MONDALE. I thank the Senator from Rhode Island, and I concur enthusiastically in the observation he has made.

Mr. President, I shall be returning shortly to the third amendment I am going to offer to give this measure national direction. However, at this point I wish to return to my first amendment, which is designed to deal with the problem of school districts that use public buildings, school buses, faculties, curriculum, and other property and assets to support privately segregated academies, as they are called, which are springing up in many parts of the country as the answer to court-ordered desegregation. These academies are all white. Some of them, according to the testimony, have been the recipients of public school buildings which have been sold to them at token prices—in some cases $10 and $15—and some of them have used and are using public school buses. Some of them have had public textbooks loaned to them. In one case, the NEA reported a peculiar arrangement was developed which had the effect of lending publicly salaried faculty members to privately segregated academies.

Obviously, if this kind of circumvention and escape from duly issued court orders is permitted, or if we have a system by which public moneys directly or indirectly end up supporting privately segregated educational institutions, the goal of the country for quality education will be frustrated.

For this reason, I have proposed the amendment which I now send to the desk and ask to have stated.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

"On page 15, line 2, insert before the period a colon and the following: '*Provided further*, That no part of the funds contained in this appropriation shall be used to assist a school district which, has engaged in the gift, lease, or sale of real or personal property, or services, to a nonpublic elementary or secondary school or school system practicing discrimination on the basis of race, color, or national origin.' "

Mr. MONDALE. Mr. President, I call up for myself, Mr. Case, Mr. Kennedy, Mr. Javits, Mr. Bayh, Mr. Brooke, Mr. Pell, Mr. Muskie, Mr. Cranston, Mr. Hart, Mr. Hughes, Mr. McGovern, Mr. Ribicoff, Mr. Williams of New Jersey, Mr. McGee, Mr. Young of Ohio, Mr. Goodell, Mr. Schweiker, Mr. Nelson, Mr. Harris, and Mr. Eagleton a revision of amendment No. 702 to H.R. 17399, second supplemental appropriations bill.

This bill, which as reported by the Appropriations Committee on June 8, contains the $150 million that the administration seeks under existing legislative

authority to assist school desegregation this summer and throughout the 1970–71 school year.

These funds represent the initial portion of the President's desegregation proposal. They would be added to the following programs: Part D of the Educations Professions Development Act, the Cooperative Research Act, title IV of the Civil Rights Act of 1964, sections 402 and 807 of the Elementary and Secondary Education Act, and title II of the Economic Opportunity Act. The administration will request additional funds under its proposed Emergency School Aid Act of 1970 following congressional action on the bill.

Amendment No. 702 as revised would prohibit assistance under this appropriation to school districts which have transferred property, services or equipment to nonpublic schools that practice discrimination on the basis of race, color or national origin. This amendment seeks to prevent indirect Federal subsidies of private segregated academies in cases, such as those described in a report by the National Education Association, where a "public school, opened in 1947, was declared surplus by school officials in June 1969 and sold to an individual, using sealed bids, for $1,500, and team members learned that the purchaser, in turn, sold it to a private group for $10,"—where "former public school buses, also declared surplus and put up for bid, have been obtained and are now being used to transport the students to the school"—where "localities 'surplus' public school furniture has been sold to private schools," or where "some equipment purchased with title I funds disappeared from the public school in one country."

Amendment No. 702, like amendment No. 703 which I will call up shortly, is designed to clarify and make explicit existing authority and responsibility vested in the Secretary of HEW to prevent funds under this appropriation from being granted to schools and school districts that are practicing a form of token desegregation or paper compliance while discriminating within schools.

Unfortunately, there are numerous examples of ways in which the desegregation process is being abused and distorted. The Select Committee on Equal Educational Opportunity has received testimony from several individuals and organizations documenting the existence of token or paper compliance with desegregation requirements. For instance, we have learned about desegregated schools which:

Retain totally segregated classes;

Are still operating under illegal freedom of choice plans;

Are transferring their facilities and equipment to private segregated academies;

Are in districts which have reduced the level of local or state financial aid for schools when desegregation has occurred in order to ease the financial burden of parents whose children attend these segregated academies;

Have discriminatorily fired or demoted black faculty;

Have segregated extracurricular activities including, for example, the exclusion of Negroes from organized athletics, student government, proms, dances, cheerleading, or have operated separate and overlapping bus routes for blacks and whites;

Or in other ways have abused and circumvented the goal or quality integrated education.

The Select Committee on Equal Educational Opportunity has heard, for example, about cases in which the students are segregated within "desegregated" schools, in one high school white students were housed in one wing of the building, black students in another. This "desegregated" school has staggered and segregated lunch periods, and a dual system of bells so that whites and blacks do not come into contact in the corridors between classes. We have heard of another "desegregated" school in which black students are taught in segregated classrooms by black teachers, and in which high school commencement exercises were segregated, with white and black students seated on opposite sides of the football field and blacks receiving their degrees from a recently fired black principal, rather than from the white school superintendent.

In my judgment, it is absolutely essential that schools such as the two I have described, or schools which are abusing the desegregation process in any of the ways I listed above, are prohibited from receiving funds under this appropriation. I am personally convinced that under the 14th amendment, and title VI of the Civil Rights Act of 1964, the Secretary of Health, Education, and Welfare already has the authority and responsibility to prohibit Federal funding of schools or school districts which are practicing any of the kinds of discrimination I have described. I am pleased that Secretary Finch, and Mr. Stanley Pottinger, Director of the Office of Civil Rights in HEW, share this view. During a recent joint hearing of the Education Subcommittee and the Select Committee on Equal

Educational Opportunity, I read this same list of abuses to Secretary Finch and asked him if districts engaging in this token and misleading form of "desegregation" would be entitled to the assistance under this appropriation or under the proposed Emergency School Aid Act of 1970. The Secretary responded that "under no circumstances" will districts abusing the desegregation process through mere technical or cosmetic compliance receive funding. He said, and I quote:

"We, *under no circumstances*, will fund districts out of compliance with Title VI, those who fire or demote anyone on the basis of race or with segregated classrooms, or with other basic things that you have mentioned."

I respect and support the existing authority which prohibits Federal funding to districts practicing the kinds of racial discrimination I have listed, and I heartily congratulate the Secretary of Health, Education, and Welfare, for his commitment and promise to assure that no districts abusing the desegregation process in these or other ways will receive funding under this appropriation. There may be disagreement on the part of some observers, however, about whether title VI or the 14th amendment reach the specific abuses concerning assistance to private segregated academies or the supplanting of State and local funds.

We have introduced amendments No. 702 and 703 in order to remove any such ambiguity. These amendments are specifically designed to clarify and make explicit the authority of the Secretary to fulfill his commitment in those cases where desegregation abuses involve direct support of private segregated academies or the supplanting or reduction of State and local aid for public schools. We have not introduced amendments to cover each of the other specific examples of the abuses because there is no doubt that the 14th amendment and title VI of the Civil Rights Act already prohibit funding of districts practicing these abuses.

I hope these amendments will be adopted. I think they represent the minimum necessary to help assure that the $150 million supplemental appropriations for desegregation is used properly.

But even with the adoption of these amendments, I am still extremely skeptical about whether this emergency appropriation can and will be spent properly and effectively. I am skeptical for several reasons.

First, while I have read the administration's justification of this request, and the committee report describing it, I am not convinced that an adequate case has been made to support the need for these funds. The committee report states that this money is sought "to meet the additional costs" of desegregation. Yet a number of witnesses before the Select Committee on Equal Educational Opportunity have stated that the elimination of the dual school system often saves money rather than costs money because it frequently reduces the extent of busing and offers the advantages of economies realized from the unified system. While I believe that funds can be used creatively to improve the quality of education in an integrated environment, I am not at all sure that this appropriations request has either identified or limited the use of funds to these creative and useful activities.

Second, I am extremely concerned about where this money is coming from. As I understand it, this $150 million request is the initial portion of the $500 million the President is committed to seek to assist school desegregation in the school year 1971. The other $350 million for fiscal year 1971 and the entire $1 billion for fiscal year 1972 are to be sought under the proposed Emergency School Aid Act of 1970. What concerns me is the President's initial statement in which he described the source of these initial funds. In his March 24 statement on desegregation the President said:

"I shall ask Congress to divert $500 million from my previous request for other domestic problems for fiscal year 1971."

I am coneerned that this $150 million may be diverted or reprogramed from other equally essential domestic programs, such as Headstart, food stamps, welfare reform, legal services, or needed education programs.

Third, I am skeptical about whether a program of this magnitude can be effectively mounted and implemented in such a short period of time. How can $150 million be allocated effectively during the months of July, August and September, when specific guidelines do not yet exist, when personnel will need to be attracted and trained, and when nearly 1,000 separate school districts will be eligible for assistance? HEW was quite candid about the difficulties of this administrative task in presenting its justification for the $150 million supplemental appropriations to the Appropriations Committee. It indicated, for example, that $2.1 million and 100 positions are required to administer this program. HEW said further that—

"This new effort will require: developing entirely new procedures and regulations which will allow the Office of Education to administer a unified coordinated program within the six separate authorities under which funds are being requested.

This will include notices to potential grantees of the terms and conditions under which grants will be available, unified application forms, regular notices in the Federal Register, and review approval or award of accounting procedures."

I wonder if these and other tasks can be accomplished effectively in 3 months.

Fourth, despite the Secretary's significant and sincere commitments, and despite, hopefully, the adoption of these amendments, I am extremely concerned about the possibility that portions of this money will still be made available to school districts which will abuse the desegregation process.

We have become painfully aware of the abuses which are now taking place in some "desegregated schools"—such as segregated classrooms, dismissal and demotion of black faculty members, and the other examples I listed earlier—despite the fact that title VI of the Civil Rights Act clearly prohibits Federal assistance to school districts practicing this kind of token or technical compliance. In short, since HEW and the Department of Justice are not now effectively enforcing existing prohibitions against these abuses, I remain very skeptical about the prospect that they will be able to prohibit funds under this new appropriation from going to districts engaging in this kind of paper compliance. My skepticism is increased by the fact that no part of this $150 million emergency appropriation for desegregation is provided to increase the enforcement capability of the Office for Civil Rights in HEW.

Fifth, I am concerned about this appropriations request because it appears to represent legislation on an appropriations bill. By dealing with contingencies, and placing additional burdens on the executive agencies which will administer this program, I fear that this request represents legislation on an appropriations bill. I am concerned about this question not only because I am opposed to the idea of legislating on an appropriations bill, but also because this form of legislation makes it extremely difficult, if not impossible, to write in the necessary kinds of administrative and policy safeguards and criteria that are essential for such a new and large program.

For these and other reasons, I remain skeptical about this appropriation. Despite the skepticism, I am willing, on balance, to give the administration a chance to provide these funds fairly and properly to assist districts which are desegregating their schools. If these amendments are adopted, I will support this appropriations request in an effort to give the Secretary an opportunity to deliver on his commitments and prevent funding of districts engaged in paper compliance.

I will, however, be watching very closely to see exactly how these funds are spent. The manner in which these funds are distributed, and the purposes to which they are spent, will influence the position I take in regard to the administration's proposed Emergency School Aid Act of 1970.

I hope that these amendments, coupled with the administration's commitment to prevent abuses, can help assure that the funds under this appropriation are granted to districts that are making honest efforts to desegregate their schools under legal requirement, regardless of their location. I hope that they will help assure that the funds are distributed equitably and among districts with legitimate needs. I hope that they can help prevent a Federal subsidy of paper compliance.

I am pleased to announce that the administration supports these amendments and that the Leadership Conference on Civil Rights supports them as necessary to assure the $150 million appropriation is used properly. The National Education Association has also endorsed these amendments.

I ask unanimous consent that copies of the amendments Nos. 703, 704, and a copy of the letter from Secretary Finch be printed at this point.

There being no objection, the amendments and the letter were ordered to be printed in the RECORD, as follows:

"AMENDMENT No. 703

"On page 15, line 2, insert before the period a colon and the following: '*Provided further*, That no part of the funds contained in this appropriation shall be used to supplant, funding from non-Federal sources, which has been reduced as the result of desegregation or the availability of funding under this section.' "

AMENDMENT No. 704

"On page 15, line 2, insert before the period a colon and the following: '*Provided further*, That no part of the funds contained in this appropriation shall be made available to carry out any program or activity under any policy, procedure, or practice denying funds to any school district legally required to desegregate schools, on the basis of geography or the source of the legal requirement.' "

"THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
"*Washington, D.C.*

"Hon. WALTER F. MONDALE,
"*U.S. Senate,*
"*Washington, D.C.*

"DEAR SENATOR MONDALE: This is in response to your request for the Department's views on the proposed amendments 702, 703 and 704 to the Second Supplemental Appropriations Bill.

"These amendments refer to the appropriation of $150 million included in the Bill for emergency assistance to desegregating school systems.

"*Amendment No. 702* provides that no funds may be extended to school districts which have transferred property or services to private schools that practice discrimination on the basis of race, color, or national origin.

"Amendment No. 703 prohibits the use of appropriated funds to supplant funding from non-Federal sources which has been reduced as a result of desegregation. Also, the amendment provides that assistance under the appropriation could only be used to supplement State and local funds which would otherwise be made available to support educational programs in the affected school districts.

"Amendment No. 704 would make clear that any school district in the process of implementing a Federal court order for desegregation would be eligible for assistance under the appropriation. In addition, school districts desegregating pursuant to a State court order would be eligible for assistance providing that such orders are being implemented and that as a minimum they provide for the elimination of practices prohibited under Title VI of the Civil Rights Act of 1964.

"The Department believes that the amendments are consistent with the purpose of the appropriation, which is to assist school districts meet their responsibilities under the law.

"With kind regards, I am
"Sincerely,

"ROBERT H. FINCH,
"*Secretary.*"

Mr. MONDALE. Mr. President, at this point I yield to the cosponsor of the proposed legislation, the distinguished Senator from New Jersey who was instrumental in the development of this amendment.

Mr. CASE. I thank my colleague, the Senator from Minnesota. I am indeed very happy to join him and other colleagues in this amendment and two others which will follow on the same general subject.

These amendments are the result of concern that the other sponsors and I have about abuses which are possible if the money provided in this bill for school desegregation is not dispensed with great care.

The administration has asked for inclusion in this bill of $150 million to assist local school districts to carry out their desegregation plans.

Secretary Finch of the Department of Health, Education, and Welfare, when he testified recently before a joint hearing of the Education Subcommittee and the Select Committee on Equal Educational Opportunity, assured the Senate that "under no circumstances" will these funds be used to assist districts which are in mere technical compliance with the law or which otherwise abuse the intent of the law.

The three amendments we have introduced propose to provide the Secretary with explicit authority to fulfill this commitment.

Past experience with civil rights legislation shows that the administration's task is made more difficult and delays are encountered when the Secretary's authority is not explicitly stated in the law. It is the intent of these amendments to avoid confusion over the intent of Congress in making these funds available to assist school districts throughout the Nation attain quality integrated education.

In response to my request for the Department's views on these amendments, Secretary Finch said they are "consistent with the purpose of the appropriation, which is to assist school districts to meet their responsibilities under the law."

While these amendments do not deal with all possible areas of abuse, they cover those that most readily come to mind. It is within the discretion of the Secretary to handle others and I am confident that he will do so. However, we will watch closely the development of this program and will bolster the legislative authority of the Secretary should this become necessary.

What specifically would these amendments do?

Amendment 702 provides that no funds may be extended to school districts which have transferred property or services to private schools that practice discrimination on the basis of race, color or national origin.

This amendment seeks to prevent the money provided in this bill from being used to support abuses such as one described in a recent report by the National Education Association. The NEA described one situation in which a public school was declared surplus by school officials in June 1969, and sold to an individual, using sealed bids, for $1,500. The purchaser, in turn, sold the school to a private group for $10 and it then was turned into a private segregated school.

Our amendment would make it clear that school districts which have engaged in this type of practice are not entitled to seek assistance under the programs which will be funded under this bill.

Amendment 703 prohibits the use of funds appropriated under this bill to supplant funds from non-Federal sources which has been reduced as a result of desegregation.

It is the intent of this amendment to require that the funds contained in this bill will be used only to supplement State and local funds which would otherwise be made available to support education programs in the affected school districts.

Amendment 704 would make clear that any school district in the process of desegregating under a legal requirement—wherever the district is located and regardless of whether the requirement is imposed by State or Federal law—would be eligible for assistance under this appropriation so long as its desegregation plan is being implemented and meets the requirements of title VI of the Civil Rights Act of 1964 at a minimum.

The administration originally testified that assistance provided under this appropriation would be available only to school districts in the 17 Southern and Border States. We believe that any school district which is desegregating according to the standards of Federal law should be eligible to receive assistance.

Mr. MONDALE. I thank the Senator for his continued leadership in this matter. I know of no other Member of the Senate who has worked with more dedication toward the achievement of a quality integrated society than the Senator from New Jersey and, as always, I am proud to join him in this proposal.

Mr. KENNEDY. Mr. President, as a sponsor of amendments 702, 703, and 704, I feel that their adoption is important if the Senate is serious about giving effective aid to desegregation efforts with the $150 million requested in this supplemental appropriations. For the Department of Health, Education, and Welfare should understand that Congress expects it to vigorously prohibit misuse of desegregation funds—including the abuses mentioned in these amendments and other familiar abuses carried out in the name of desegregation.

Amendment 702 would prohibit funds to schools which this year have sold or leased property, equipment, or services to segregated private academics. Amendment 703 would prohibit funds to schools which would use them to supplant State and local money which would otherwise be available. And amendment 704 would insure that desegregation funds would be potentially open to all schools legally compelled to desegregate—whether by Federal or State order, or Federal or State law.

Certainly I support giving Federal assistance to schools which are genuinely desegregating. In 1966 I myself introduced legislation which would have authorized Federal expenditures for this very purpose.

I have several reservations however, about this $150 million appropriation.

First, as a member of the authorizing committee, I am disturbed by this legislating on an appropriation bill. The Subcommittee on Education has recently been conducting hearings on the whole question of desegregation assistance. We are working on legislation, and trying to do a thorough and responsible job.

But instead, Congress is now being asked to just appropriate $150 million at the last minute, in a rush, before we even act on authorization.

Second, I have serious doubts whether the Department of Health, Education, and Welfare—or anyone else—can set up the administrative machinery to handle these funds quickly and well. They must hire and train staff. They must develop procedures for screening, filing, and monitoring applications. They must set up a whole new administrative operation for a brand new program. Yet they are expected to complete the main part of the job, the obligating of funds, by the end of September.

Third, I am extremely concerned about the potential for abuse. Testimony before the Select Committee on Equal Educational Opportunity, numerous reports I have seen and persons I have talked with indicate the whole range of abuses which have occurred in supposedly desegregating school districts. To cite some examples, there are cases where:

Schools are desegregated but blacks are kept in segregated classes, segregated cafeterias, segregated buses.

Blacks are excluded from extracurricular activities.

Well-constructed, modern black schools are closed as an alternative to sending white students there.

Mobile or portable classrooms are used to supplant good black schools which are closed.

Tax deductions are given to parents who take their children out of desegregating schools and send them to all-white private academies.

Black teachers, principals or administrators are demoted or fired while less qualified whites are kept.

Schools are operated under an old freedom of choice plan which has not been updated or revised under court order.

The list goes on and on. And it includes discrimination against Indian-Americans, Mexican-Americans, Eskimos, and other minorities as well.

Amendments 702 and 703 mention two such abuses. It is my understanding that they are prohibited by title VI of the Civil Rights Act of 1964, which clearly states that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." These amendments make the matter clear in these two cases. And further amendments to cover other abuses are unnecessary, because there is general agreement that title VI already prohibits them also.

I support the $150 million with the understanding that full legal action will be taken when funds are illegally misused, including:

Bringing school boards to court for contempt action;

Suing for the restitution of misused funds;

Criminal suits under the Federal false statements statute, and other appropriate Federal laws.

If we have learned anything from our experience with title I of the Elementary and Secondary Education Act, it is that we must make vigorous, thorough, Federal monitoring efforts—right from the start—if the money is to be spent as intended by Congress.

Amendment 704—which makes assistance with the $150 million available to all school districts which are under legal compulsion to desegregate—recognizes that the burden of forced desegregation is equally heavy no matter what the source of the requirement.

I myself favor broader expenditure of funds to include schools which voluntarily undertake to desegregate. They may have just as many burdens and may need the Federal assistance just as badly.

Mr. President, I am willing to take a chance if we write in some safeguards. I think that the last minute, unauthorized $150 million in a supplemental appropriation is a poor way to take legislative action, but I recognize that the problem is pressing and immediate. I am not optimistic that the rushed appropriation and hurried program will be effective, but we must take a first step.

In this context, the protections spelled out in these amendments—and guaranteed under title VI—are essential. I urge adoption of all three amendments.

Mr. STENNIS. Mr. President, will the Senator yield to me on one point?

Mr. MONDALE. I am glad to yield.

Mr. STENNIS. Mr. President, may we have order? I believe every Member in the Chamber would be interested in this colloquy.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Mississippi may proceed.

Mr. STENNIS. Mr. President, I appreciate the Senator yielding to me.

I direct attention to lines 4 and 5 of the present amendment, the words "subsequent to the beginning of the 1969–1970 school year."

Mr. MONDALE. If I may interrupt the Senator at that point, I wish to point out that in the amendment I sent to the desk that phrase was stricken. It was stricken for the reason that the Parliamentarian advised us that with that phrase the amendment would be subject to a point of order on the grounds that it is legislation on an appropriation bill.

Mr. STENNIS. Yes.

Mr. MONDALE. Nevertheless, I would expect it might be construed by the administration roughly along the lines of the omitted phrase, but that would be up to the administration.

Mr. STENNIS. What was the Senator's point. The Senator struck out the words "subsequent to the beginning of the 1969–1970 school year." My point was going to be that that is punitive in nature and it is retroactive in application. I was going to ask the Senator if he would not consider that and let his amendment, if it passes, be as of the date it becomes law.

I do not know of any school that has done these acts, but in a year of upheaval, adjustment, and change in the midterm adjustments were made. They were makeshift and they had to do everything they could, whereas they will have fair notice about this and I do not think it will reoccur.

Mr. MONDALE. I have been advised by the Parliamentarian that any reference of that kind would make the amendment subject to a point of order and that is the reason I struck the phrase which appeared in original amendment No. 702, when I sent it to the desk.

For that reason and also on the merits, I would have trouble accepting that. I concede the fairness of the Senator's statement. The Senator does not want it to apply retroactively.

Mr. STENNIS. That is correct.

Mr. MONDALE. I commend the Senator for that position. My feeling is that transfer of public property for these purposes is so clearly unconstitutional that it would not be unfair to apply the prohibition retroactively from the beginning. I would not be able to accept such a modification and if we did modify it in that manner it would be subject to a point of order.

Mr. STENNIS. What is the Senator's interpretation of his amendment when these words have been stricken out? The Senator said something about the department having certain discretion.

Mr. MONDALE. The amendment would have to be construed by the Department. As it now reads, it provides that—

"No part of the funds contained in this appropriation shall be used to assist a school district which has engaged in the gift, lease, or sale of real or personal property, or services, to a nonpublic elementary or secondary school or school system practicing discrimination on the basis of race, color, or national origin."

It would have to stand on its own terms.

Mr. STENNIS. Would not the Senator be willing to let it read, "has engaged subsequent to the passage of this Act" in any of these matters? I would support his amendment if he would modify it that way.

Mr. MONDALE. On the merits, I personally could not accept it, because, as I said earlier, I believe the practice is so obviously unconstitutional, and would have been at the time it occurred, that it would not be unfair to retroactively apply it that way.

For practical purposes, the abuse did not start until last fall, when the Supreme Court issued its decision requiring immediate elimination of de jure segregation, so that its retroactive sweep is only of a limited nature in any event.

Mr. STENNIS. The Senator has eliminated the language "subsequent to the beginning of the 1969–70 school year"?

Mr. MONDALE. The Senator is correct. I have eliminated that phrase.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. MONDALE. I yield.

Mr. BAKER. It is my understanding, from the colloquy, that the language, on lines 4 and 5, "subsequent to the beginning of the 1969–70 school year" has been stricken from the amendment.

Mr. MONDALE. That is correct.

Mr. BAKER. Is my further understanding correct that the reason why it was stricken is that it would create a condition precedent or a situation that extends into the future as a condition precedent?

Mr. MONDALE. I am not thoroughly familiar with the grounds, except that the Parliamentarian has advised me that that phrase would make the amendment subject to a point of order.

Mr. BAKER. The point I am making is that I wonder if I understood, as the Senator from Mississippi understands is implicit, if the words "subsequent to the beginning of the 1969–70 school year" are eliminated, is it not necessary to conform the rest of the language to that intent by using the conforming language "is engaging" instead of "has engaged in" because otherwise it would be retroactive.

Mr. STENNIS. That is correct.

Mr. BAKER. Would the Senator mind putting that inquiry to the Chair?

Mr. MONDALE. Mr. President, I ask unanimous consent that I may ask for a quorum call without losing my right to the floor at the conclusion thereof.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MONDALE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MONDALE. Mr. President, I would be willing to modify my amendment to reinclude the deleted phrase which reads "subsequent to the beginning of the 1969–70 school year," if by so doing we could have unanimous consent that that phrase would not be subject to a point of order. That would have the advantage of being retroactive only to the beginning of the past school year, and not running back further than that.

The PRESIDING OFFICER. Is the Senator asking unanimous consent that it be in order?

Mr. MONDALE. Perhaps we could have a little colloquy.

I yield to the Senator from Mississippi.

Mr. STENNIS. Mr. President, reserving the right to object, as I said, I know of no particular school that has violated these terms, but to pass a law now to make it retroactive in application is contrary to the American system. It is unfair. Suppose they made a sale, according to the Senator's amendment, and got the money. There is nothing invalid about that. Certainly, we ought not to go back to penalize them. Suppose they got market value? According to the Senator's terms, they would not be eligible for any of this money.

The Senator has a great motive and design, but the way the amendment is written, it is retroactive, without notice, and would apply to the just and the unjust.

Mr. MONDALE. Perhaps I may respond to that statement. I can only repeat the point I made earlier, that the practice of donating school buildings, schoolbuses, textbooks, lending faculty, flowered right after the Supreme Court decided that desegregation of de jure situations must be eliminated immediately. That is why the proposed amendment originally included the phrase, referring in time to the beginning of the current school year, and prohibited the expenditure of any part of the $150 million for school districts which had engaged in any of those practices from that time on.

I would be glad to include in the amendment a provision as well, that the sale to which we make reference is a sale for less than value to the school district. In other words, what we are trying to get at is a subsidy——

Mr. STENNIS. Mr. President, with all deference to the Senator's amendment, I think, being retroactive in application, it would be an ex post facto law, and I object to the modification requested.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. MONDALE. I yield.

Mr. BAKER. Mr. President, I shall not detain the Senate long on this point, because it is my intention to support the amendment, provided we can arrive at certain modifications to make it fair in its application.

I agree with the Senator that it is a deplorable practice to dispose of school property for discriminatory purposes, as I am sure most of our fellow Senators do.

The modification would delete that section of the amendment in lines 4 and 5 which reads "subsequent to the beginning of the 1969–70 school year" has engaged in the gift, lease, or sale, et cetera. That, in effect, creates an absolute situation where a school district which has done this prior to this time is forever precluded from having Federal assistance under these programs, which seems to be, as the distinguished Senator from Mississippi has stated, retroactive, and certainly, to say the least, unfair.

I would suggest, if the Senator would consider it, that the amendment be modified by striking from lines 4 and 5 the words "subsequent to the beginning of the 1969–70 school year" and also striking the words "has engaged" on line 5 and inserting instead the word "engages," which makes it prospective in effect; and I think, by the example and the colloquy here, this encounter today will serve notice that we do not intend to condone and do not condone any sort of subterfuge of this type.

Mr. MONDALE. Mr. President, I have two problems with that. One is this widespread engagement in such practices recently, and the prospective amendment would not reach that problem. Second, I have been advised by the Parliamentarian that such language would be subject to a point of order because it would create a contingency under rule XVI.

For both reasons, I feel prohibited from responding affirmatively to the suggestion of the Senator from Tennessee.

Mr. BAKER. Mr. President, will the Senator yield so I may put to the Chair a parliamentary inquiry as to the propriety of that proposal?

Mr. MONDALE. I am happy to yield, with the unanimous-consent request that I be recognized following the Chair's response to the parliamentary inquiry.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Tennessee will state his parliamentary inquiry.

Mr. BAKER. Mr. President, I put this inquiry to the Chair: If amendment No. 702 were modified by striking from line 4, beginning with the word "subsequent" through line 5 ending with the word "engaged" and substituting the word "engages," would the amendment as modified be subject to a point of order?

The PRESIDING OFFICER (Mr. Proxmire). The Parliamentarian advises the Chair that such an amendment would appear to be in order.

Mr. BAKER. I thank the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. BAKER. Mr. President, will the Senator from Minnesota yield further? I really support the purpose of his amendment. Since the Parliamentarian has advised me that it would not be subject to a point of order, and since I think it accomplishes the Senator's purpose, and I believe there would be no objection to it, I urge that the Senator reconsider accepting that modification.

Mr. MONDALE. Mr. President, I still have the problem of dealing with school districts which gave away their school buildings, their schoolbuses, their textbooks, and the rest, in response to the Supreme Court order of last year requiring immediate desegregation. The language proposed by the Senator from Tennessee is prospective, and would not reach those school districts.

Mr. BAKER. Will the Senator yield further?

Mr. MONDALE. I yield.

Mr. BAKER. I think that practice is deplorable, and I agree with the Senator; but I think the proposal would be subject to a point of order if we, as a part of the legislative branch, tried to spell out under what circumstances a gift was legal or illegal. I think it would be within our rights to make it illegal to do that, and then submit to the judiciary the question of whether or not they did it in an attempt to interfere with desegregation. But if we try to spell it out and say "it is illegal because you did it," it would be subject to a point of order as being unconstitutional. I think there is a way to do it, but I think the judiciary is the proper forum.

Mr. MONDALE. Mr. President, I cannot agree with the observation offered by the Senator from Tennessee to this extent: When property was donated by public school systems to private, segregated academies following the decision of the Supreme Court, I think they knew full well what they were doing, and it was to donate public properties to an allegedly private institution for an unconstitutional purpose. I think it would be wrong to come along now and reward such a school district with a payment as proposed under this pending appropriations proposal. I would much prefer that the time frame to which my original amendment made reference could be included, but I was advised by the Parliamentarian that that would be contrary to rule XVI.

At this time, I should like to propound to the Chair, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MONDALE. If my amendment read exactly the same as amendment 702, containing the phrase "subsequent to the beginning of the 1969–70 school year," would that be subject to a point of order?

Mr. PROXMIRE. It seems to leave a contingency, because there would be an indefinite circumstance, ad infinitum.

Mr. MONDALE. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MONDALE. If the phrase referred to were substituted by a phrase reading "engages or has unlawfully engaged in" would that phrase be subject to a point of order?

The PRESIDING OFFICER. The Parliamentarian suggests that the suggested language be submitted in writing, so the Chair can take it under consideration.

Mr. MONDALE. I would ask the Senator from Tennessee if such language, which, in effect, begs the question of whether an illegal transfer has occurred, would meet his objection.

Mr. BAKER. Mr. President, if the Senator will yield there, I think it probably would. I wonder if I might ask unanimous consent that I could ask for a quorum call, without the distinguished Senator from Minnesota losing his right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, as far as I am concerned——

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Tennessee?

Mr. MONDALE. I yield.

Mr. BAKER. As far as the Senator from Tennessee is concerned, the language suggested by the Senator from Minnesota, as I understood it, is satisfactory. The Senator's language was "engages or has unlawfully engaged in"; is that correct?

Mr. MONDALE. The Senator is correct.

Mr. BAKER. It is my understanding that this would be an effort to make the statute prospective by the word "engages" and retroactive, but with a judicial determination by the phrase "unlawfully engaged in." Is that correct?

Mr. MONDALE. I agree with the Senator from Tennessee, except in one respect. A determination would have to be made by the administrating agency that the transfer of property that is retrospective was an unlawful one. Otherwise, insofar as the retrospective reach is concerned, it would not apply.

Mr. BAKER. I have no objection to the language.

Mr. MONDALE. Mr. President, I modify my amendment to provide after the word "which," on line 4, the words "engages or has unlawfully engaged," and so forth.

The PRESIDING OFFICER. The amendment will be so modified, and the clerk will so state the amendment.

Mr. MONDALE. Before so modifying, I ask for a parliamentary ruling on whether this is consistent and in order under rule XVI.

The PRESIDING OFFICER. In the opinion of the Chair, it would appear to be in order, as the Senator from Minnesota has proposed to modify it.

The clerk will read the amendment as modified.

The bill clerk read as follows:

"On line 5, after the word 'has' insert 'engages or has'."

Mr. MONDALE. "Or has unlawfully engaged."

The PRESIDING OFFICER. Will the Senator send his written amendment to the desk?

Mr. MONDALE. I send it to the desk.

The bill clerk read as follows:

"On line 5, after the word 'year,' which is stricken, insert 'engages or', and after the word 'has' insert 'unlawfully'."

Mr. MONDALE. Mr. President, I so modify the amendment.

The PRESIDING OFFICER. The amendment is so modified.

Mr. MONDALE. Mr. President, I ask for the yeas and nays.

Mr. Byrd of West Virginia and Mr. Ervin addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota has the floor. Does the Senator from Minnesota yield to the Senator from North Carolina?

Mr. CASE. May we ask for the yeas and nays?

Mr. MONDALE. I ask for the yeas and nays.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum. Will the Senator yield for a question, first?

Mr. MONDALE. I am glad to yield to the Senator from West Virginia.

The PRESIDING OFFICER. Does the Senator withdraw temporarily his request for the yeas and nays?

Mr. MONDALE. Yes.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield, with the understanding that he will not lose his right to the floor, so that I might make a parliamentary inquiry?

The PRESIDING OFFICER. Does the Senator yield for that purpose?

Mr. MONDALE. I yield.

The PRESIDING OFFICER. The Senator from West Virginia will state his parliamentary inquire.

Mr. BYRD of West Virginia. Mr. President, if I understand the changes by which the Senator has modified his amendment, the amendment reads as follows:

"engages or has unlawfully engaged." Does not the fact that the words "unlawfully engaged" will of necessity, place an additional responsibility upon the Secretary of the Department of Health, Education, and Welfare thereby increase his responsibilities and as a result thereof constitute legislation on an appropriation bill?

Mr. MONDALE. Mr. President, before the Chair rules, may I make an observation with respect to the question raised by the Senator from West Virginia?

Mr. President, if I could have the attention of the Parliamentarian, I would like to make a comment on the question raised by the Senator from West Virginia, before the Chair rules. I should like the attention of the Presiding Officer and the Parliamentarian.

The PRESIDING OFFICER. The Parliamentarian will give the Senator from Minnesota his attention, and the Presiding Officer will also give the Senator from Minnesota his undivided attention.

Mr. MONDALE. Thank you, Mr. President.

The burden imposed on HEW by amendment 702 as modified is already imposed by title VI of the Civil Rights Act of 1964. Therefore, the amendment is not subject to a point of order under rule XVI, paragraph 2, as subjecting the Department to a burden not already imposed by existing law.

This amendment prohibits funding under the emergency appropriation of school districts which have given assistance to racially segregated private schools. The Supreme Court has plainly ruled in the tuition grant cases that assistance by public agencies to private segregated schools is racially discriminatory, in violation of the 14th amendment, and I have shown those authorities to the Parliamentarian. See, e.g., *Poindexter* v. *Louisiana Financial System Commission*, 296 F. Supp. 686, *aff'd* 393 U.S. 17 (1968); *Brown* v. *South Carolina State Board of Education*, 296 F. Supp. 199, *aff'd* 393 U.S. 22 (1968).

It is, therefore, also violative of title 6 of the Civil Rights Act of 1964, which applies to nondiscrimination and applies the 14th amendment to programs receiving Federal financial assistance. *Taylor* v. *Cohen*, 405 F. 2d 277 (4th Cir., *en banc*, 1968).

Therefore, it is my opinion that the amendment is not subject to a point of order under rule XVI.

The PRESIDING OFFICER. The Senator is correct. These duties already have been imposed by the law.

Mr. MONDALE. Mr. President, I ask for the yeas and nays.

Mr. BYRD of West Virginia. Mr. President, before the Senator asks for the yeas and nays——

Mr. MONDALE. I ask the Presiding Officer whether the yeas and nays have been ordered.

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. MONDALE. I ask for the yeas and nays.

Mr. BYRD of West Virginia. Does the Senator want to shut me out from attempting to——

Mr. MONDALE. I deeply apologize to the Senator from West Virginia.

Mr. BYRD of West Virginia. The Senator owes me no apology.

Mr. President, the amendment as presently constituted, even with the modification that has already been ordered, would be difficult to enforce, because it is not tied to the disposition of federally funded property, but would apply to any and all property or services.

HEW now has policies and administrative enforcement mechanisms in effect and under development which could carry out the intent of the amendment so far as Federal funds are concerned. But the amendment would prohibit the gift, the lease, or the sale of all property and services whether or not they have been federally funded. In other words, it is all encompassing. It includes all property or services.

In the first place, I think HEW would have difficulty in obtaining reliable information concerning the sale of non-federally funded property or of services. Certainly, an assurance of compliance could be, and probably should be, required; but only a careful auditing of financial transactions and of the use of instructional staff time would reveal the prohibited practices if a school district wished to conceal them.

In view of the fact that this is emergency assistance, with a September 30, 1970, deadline for obligation, it seems to me that this provision would be almost impossible to implement effectively. Therefore, I wonder whether the Senator

would be willing to modify his amendment by adding on line 6, following the second comma, after the word "services," the following phrase, "supported by Federal funds." So that it would be confined to those gifts, leases and sale of property and services supported by Federal funds.

Mr. MONDALE. I thank the Senator from West Virginia for that suggestion. However, I must respectfully decline it, for two reasons.

First, it does not impose on additional responsibility upon the Department of Health, Education, and Welfare. The 14th amendment does not draw any distinction between Federal, State, and local properties. The distinction is between public and private property. Therefore, contrary to the suggestion of the Senator from West Virginia, I do not believe that any additional burden is imposed upon the Department.

Second, I refer specifically to the letter I received today from Secretary of Health, Education, and Welfare Finch, in which he supports amendment No. 702. Therefore, both in terms of legal theory and the administration's position, I cannot accept the proposal of the Senator from West Virginia. Moreover, if the distinction were drawn on the basis of the source school district property, on whether the source is Federal, State, or local, this distinction would be utterly unadministrable and would subvert and destroy any effort to achieve desegregation. Therefore, I must reluctantly decline the suggestion made by the Senator from West Virginia.

Mr. President, I ask for the yeas and nays.

There was not a sufficient second.

Mr. MONDALE. Mr. President, I ask unanimous consent, without losing my right to the floor, that there be a quorum call——

Mr. MANSFIELD. Mr. President, will the Senator withhold that request?

Mr. ERVIN. Mr. President, I object.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. MONDALE. Mr. President I am prepared to vote at this point.

Mr. ERVIN. Mr. President, I should like to be heard for 30 seconds.

The PRESIDING OFFICER (Mr. Proxmire). The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, under this amendment as modified, an integrated school district would be denied Federal funds if it made a sale to a nonracially mixed school even though the sale was to the advantage of the school district.

Is that not going some, even for an effort to continue the reconstruction of the South?

In other words, it would prohibit a district receiving funds appropriated by the bill even if the sale it made was to its advantage.

Mr. BYRD of West Virginia. Mr. President; I now call up my amendment at the desk and ask that it be stated by the clerk.

Mr. MONDALE. Mr. President, a parliamentary inquiry.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the amendment be stated by the clerk first.

Mr. MONDALE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. Muskie). The clerk will state the amendment.

The ASSISTANT LEGISLATIVE CLERK. On line 6 of the Mondale amendment, No. 702, after the word "services," insert the words "supported by Federal funds."

The PRESIDING OFFICER. The question is on agreeing to the amendment to the amendment.

Mr. MONDALE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Minnesota will state it.

Mr. MONDALE. Mr. President, as I understand it, this is a modification proposed by the Senator from West Virginia which would limit the reach of amendment No. 702 only to property, given away by local school districts unlawfully, or in other ways, to private segregated schools, which is owned by the Federal Government and would not include any restrictions on State owned or locally owned public property given to such private segregated organizations. Do I understand that amendment correctly?

Mr. BYRD of West Virginia. The amendment would place into effect the modification which I had hoped the Senator would accept earlier. The words are, "supported by Federal funds."

As I have indicated, this is emergency assistance with a deadline for obligation of September 30, 1970. It seems to me that this provision as now written would

be almost impossible to effectuate. I think it would impose a heavy administrative burden upon the Department of HEW. I feel that these gifts of property, services, and property, should be confined to federally supported—to those properties and services supported by Federal funds.

That is the import of the amendment I have offered to the Senator's amendment and I hope that the Senate will accept my amendment.

Mr. MONDALE. Mr. President, I should like to ask the Senator from West Virginia if I might have a moment or two to look at the amendment as proposed before voting on it.

Mr. BYRD of West Virginia. Of course.

Mr. STENNIS. Mr. President, may I ask the Senator from West Virginia a question?

Mr. BYRD of West Virginia. I yield.

Mr. STENNIS. Let me ask the Senator from West Virginia whether his amendment applies only to the words "or services" in line 6?

Mr. BYRD of West Virginia. No, sir. It modifies the language of line 5 also.

Mr. STENNIS. I thank the Senator.

Mr. BYRD of West Virginia. As to "gift, lease, or sale of property, and services, supported by Federal funds."

Mr. MONDALE. Mr. President, will the Senator consent to proposing his amendment not at the point on line 6 as suggested, but at the point on line 4 following the word "district," so that it will refer to "school district" rather than to "gift, lease, or sale of real or personal property, or services"?

Mr. BYRD of West Virginia. No, because I want to get at the heart of the problem. The Senator's amendment would apply to any property, all property; any services, or all services; and would not be confined to federally funded property and services. I think it should be so confined. That is the purpose of my amendment. I will ask for a vote on this amendment at the appropriate time.

Mr. MONDALE. Mr. President, I ask for the yeas and nays on the amendment as offered by the Senator from West Virginia.

The yeas and nays were ordered.

Mr. MONDALE. Mr. President, let me simply say this, that the 14th amendment has never drawn a distinction on the basis of which government, Federal, State, or local, has title to property. The 14th amendment reaches all public property. It is that law which entitles——

Mr. BYRD of West Virginia. I am sorry to interrupt the Senator, but we are not talking about which government has title. We are talking about what kind of property is going to be disposed of.

Mr. MONDALE. That is correct.

Mr. BYRD of West Virginia. And whether it is federally supported or not.

Mr. MONDALE. The Senator is correct, but the constitutional prohibition prohibits any public property from being given to a privately segregated organization.

That is what the amendment is designed to discourage, by withholding public money under this appropriation to public schools which violate the constitutional prohibition. It does not impose any new responsibility under title VI. It is the law now, as declared by the Supreme Court. It merely makes it clear that the money is not in fact to be turned over. It would be the modification proposed by the Senator from West Virginia that would create a new and difficult technicality which, in my opinion, would greatly encourage the establishment of privately segregated academies, unbelievably, through the use of public property and through Federal subsidies. I therefore oppose his amendment.

Mr. BYRD of West Virginia. Mr. President, I repeat, that between now and September 30, 1970, it would be impossible to enforce the amendment as the Senator from Minnesota has offered it. So I think from the standpoint of enforcement alone, my amendment is on solid ground.

I say again that the Senator's amendment would apply to all property, all services. My amendment would confine it to federally supported property and services.

Mr. MONDALE. Mr. President, may I say to the Senator from West Virginia that I think there are very profound problems about administering any of this money in the time frame that is offered. But if we cannot enforce anything as elementary as prohibiting Federal funds to school districts that are giving away some of their funds and property, then I say that we ought not to do it.

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So the amendment of Mr. BYRD of West Virginia to Mr. MONDALE's amendment was rejected

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The PRESIDING OFFICER. The pending question is on agreeing to the amendment of the Senator from Minnesota.

The yeas and nays have been ordered, and the clerk will call the roll.

Mr. STENNIS. Mr. President, will the Senator from Minnesota yield to me for the purpose of making a point of order?

Mr. MONDALE. I am glad to yield to the Senator from Mississippi for that purpose.

Mr. STENNIS. I thank the Senator. Mr. President, I direct the attention of the Chair now to page 14, line 7, and on through lines 1 and 2 on page 15.

When the debate started, I made inquiry about the authorization for this amount of money, Mr. President, but I have learned since then that this authorization really is taken from several authorization acts that are listed on page 14, beginning with the Education Professions Development Act, the Higher Education Act of 1965, the Cooperative Research Act, title IV of the Civil Rights Act of 1964, section 807 of the Elementary and Secondary Education Act of 1965, section 402 of the elementary and secondary education amendents of 1967, and the Economic Opportunity Act of 1964, on down through line 17 and including the figure "$150,000,000" on line 18, where we find this language: "to remain available until September 30, 1970."

Mr. President, my point of order is that the remaining language in line 18, plus "1970" on line 19, is legislation on an appropriation bill. I repeat those words: "to remain available until September 30, 1970," and the proviso beginning on line 19 down through line 2 on page 15, is legislation in a general appropriation bill. Therefore, I make the point of order, Mr. President, that this is an appropriation that extends beyond existing law—that is, from June 30 until September 30, 1970—and that we have no authorization for this appropriation for the period I have just designated and the effect of the proviso beginning on line 19 is to amend the earmarking in the authorization act.

Just to make sure I have made it clear, I repeat: I raise the point of order that these words beginning on line 19, page 14 of the bill, are purely legislation on an appropriation bill, and, therefore, I make the point of order that the entire section, beginning on line 7, page 14, down to and through line 2 on page 15, should be stricken from the bill as being legislation on a general appropriation bill.

The PRESIDING OFFICER (Mr. Muskie). The Chair will state that the point of order is well taken. As advised by the parliamentarian, under the precedents of the Senate, this is obviously legislation on a general appropriation and not in order under rule XVI, paragraph 4.

Mr. STENNIS. Mr. President, I am a member of the Committee on Appropriations. I want to say to the Senate that I did not realize that that language was legislation on an appropriation bill during full committee markup.

I thank the Senator for yielding.

Mr. MONDALE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MONDALE. Do I correctly understand that the Chair has just ruled that the section entitled "Office of Education, Emergency School Assistance," appearing on page 14 of the pending bill, starting on line 7 through line 2 of page 15, is subject to the point of order that it is violative of rule XVI?

The PRESIDING OFFICER. Rule XVI, paragraph 4.

Mr. MONDALE. Has that point of order been made?

The PRESIDING OFFICER. The point of order has been made and sustained that the language on line 18 of page 14 of the bill, "to remain available until September 30, 1970," the provision beginning on line 19 and the language on lines 1 and 2 of page 15 of the bill, "expenses shall remain available until June 30, 1971," is legislation on an appropriation bill, and the point of order is well taken.

Mr. MONDALE. Do I correctly understand, then, that that is no longer a part of the matter now before the Senate?

The PRESIDING OFFICER. The Senator's understanding is correct.

Mr. MONDALE. I thank the Chair.

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[From the Congressional Record, June 25, 1970]

Office of Education Appropriations, 1971

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Mr. JAVITS. Mr. President, the amendment which I have proposed is for $150 million. The general purpose is to utilize various authorization sections of the law allocating money under those authorities which the law allows, which will, we believe, assist the desegregating of school districts which are ordered to desegregate by law, or have within the recent past desegregated. It has been discussed, as to the substance of the amendment, most excellently and thoroughly by the distinguished present occupant of the Chair, the Senator from Minnesota (Mr. Mondale), by the Senator from Mississippi (Mr. Stennis), by the Senator from West Virginia (Mr. Byrd), who managed the supplemental appropriation bill, and by others, to such an extent that I think it would be imposing upon the Senate to go over the details of that argument, and I shall not do so.

I shall try, in every way that I can, to emphasize the differences which we face now in respect of this situation.

Mr. President, the amendment is different from the provision which was included in the supplemental appropriations bill as reported by the Appropriations bill as reported by the Appropriations Committee both in respect of those provisions which were contained in the bill itself, in respect of authority, forward dating, et cetera, and in respect of at least one of the provisos. As to the other provisos originating with the distinguished Senator from Minnesota, as these passed the test of a vote in the Senate, and, indeed, were changed by that vote, and after a rather extended debate, I have simply lifted the texts of them, with the permission of the Senator from Minnesota, and incorporated them in my amendment.

So I would like, Mr. President, to point out the differences.

The differences are, first, that any forward projection beyond the time for which appropriations are provided in this bill, to wit, fiscal 1971, are not attempted, nor is there any effort to anticipate fiscal 1971. So whatever is done cannot be available after July 1, 1971. In those respects, the amendment differs materially from the amendment which we considered the other day, so that it eliminates two parts of the supplemental appropriation bill provision which was before us for that reason.

The other respect in which it differs is with respect to the first proviso which is one of the grounds upon which the section was ruled out upon a point of order has been completely revised, and I should like to read to the Senate the section as it is revised, and then refer back to the section which was found inappropriate under the Senate rules.

The proviso as revised reads as follows. It is found on page 2 of amendment No. 737, beginning at line 2 and ending at line 7. It reads as follows: "*Provided*, That no part of any funds appropriated herein to carry out programs under title II of the Economic Opportunity Act of 1964 shall be used to calculate the allocations and proration of items under section 102(b) of the Economic Opportunity Amendments of 1969."

This is a very different proviso from what was contained in the appropriate section of the supplemental bill, which read as follows: "*Provided*, That no part of any funds appropriated herein to carry out programs under title II of the Economic Opportunity Act of 1964 shall be included as part of the amounts appropriated for the purpose of determining allocations for each purpose set forth in clauses (1) through (8) of section 102(b) of the Economic Opportunity Amendments of 1969."

The holding on Monday was that this was legislation in an appropriation bill—to wit, a waiver or a renunciation of a given section of a particular act. On the other hand, the proviso as contained in my amendment is a limitation, because it goes to the mechanical question of "shall be used to calculate," and that is a material difference between these two provisos, which in my judgment makes the necessary difference to qualify the amendment I have submitted.

Mr. President, the other aspect of the matter which I think is very important to consider is the utilization of this $150 million. It is expected that the utilization of the money will follow closely the sources of the authorizations which justify the appropriation. The money, if appropriated, will be spent pursuant to the authorities under which it is appropriated. These authorities are as follows:

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For community development programs, which are spelled out in title II of the Economic Opportunity Act of 1964, under the heading "Urban and Rural Community Action Programs," $100 million.

For personnel development programs, which are found in the Education Professions Development Act, part D, under the heading "Improving Training Opportunities for Personnel Serving in Programs of Education other than Higher Education," $9 million.

For major demonstrations, authorization found in the Cooperative Research Act, $14 million.

For drop-out prevention, authorization found in section 807 of the Elementary and Secondary Education Act, $5 million.

For technical assistance, found under title IV of the Civil Rights Act of 1964, $15 million.

For planning and evaluation, authorized under section 402 of the Elementary and Secondary Education Act Amendments of 1967, $5 million.

And the remainder of $2,000,000, authorized as salaries and expenses.

Mr. President, it is the intention of the administration to spend this money under those authorizations and with fidelity to those authorizations.

Another question which troubled Members and which was debated here related to the exact concept which was embodied in proviso (a) contained in my amendment at page 2, line 8. That proviso reads as follows:

"(a) to assist a local educational agency which engages, or has unlawfully engaged, in the gift, lease or sale of real or personal property or services to a nonpublic elementary or secondary school or school system practicing discrimination on the basis of race, color, or national origin."

That particular section was the subject of an amendment which was approved in the Senate and was the subject of an effort to amend the amendment which failed in the Senate. The words here set forth are exactly as they emerged from the give and take of debate and as they were left by the votes before the Mondale amendment was made obsolete by the fact that the basic provision of the bill to which it was addressed was itself stricken out on a point of order.

So that we have simply taken what the Senate did as to that proviso—what the Senate actually legislated, as it were, to the extent that it did have rollcall votes. However, concern was expressed over it, before it was refined—and this was a very excellent suggestion of the Senator from Tennessee (Mr. Baker)—to include the words on line 9, page 2 of my amendment, "or has unlawfully engaged in the gift, lease or sale of property." In other words, whatever retroactivity there was, was based upon the fact that it was unlawful.

Let us remember that this whole question is one of discretion in terms of the use of this money by the Secretary of Health, Education, and Welfare. In other words, even if this proviso were not in the law, the Secretary of Health, Education, and Welfare, himself, could determine that he would not afford whatever assistance he could afford under this appropriation to school districts which had engaged in that practice. He did not need the proviso to do it; but with the proviso, this is an instruction to him to proceed in that way.

It is very important, therefore, as to the intention of the administration in that regard; because to those who have concerns about this particular part of the amendment, the fact that the administration had a given intention with respect to it anyhow, so that it becomes really a tautological question as to whether or not it is incorporated is very important. So I will read a letter from the administration, delivered to me yesterday, which bears on its intention, anyhow, without regard to the inclusion or lack of inclusion of the proviso with respect to this particular matter. The letter is addressed to me, signed by the Under Secretary of Health, Education, and Welfare John G. Veneman, and reads as follows: It is available to every Senator.

"THE UNDER SECRETARY OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

"DEAR SENATOR JAVITS: I am writing to reaffirm this Department's assurances, given by Secretary Finch at the joint hearings conducted by the Senate Education Subcommittee and Senate Select Committee on Equal Educational Opportunities, that funds provided to assist local school districts involved in the process of desegregation will be administered in a manner consistent with constitutional standards and with the objective of achieving successful desegregation.

"The Department understands and shares the concern expressed in the Senate about the possible provision of Federal financial assistance, such as proposed in the President's Emergency School Aid legislation, to school districts which have engaged in discriminatory and unlawful practices, including the disposition of property and services to other agencies with the intent to avoid desegregation. I can personally assure you that we do not intend to reward school districts which seek to circumvent the law. All project applicants and applications for aid will be carefully reviewed and approved only if the Department is fully satisfied that the recipient school districts are conducting their educational programs and activities in a lawful manner and with full regard to achieving successful desegregation throughout their school system.

"Sincerely,

"JOHN G. VENEMAN, *Under Secretary.*"

Now, Mr. President, it seems to me that this is an important point because it indicates that the proviso goes no further than the intention of the department which will have discretion anyhow in carrying out its responsibilities under this particular provision.

Let me make two points and invite the attention of the distinguished Senator from Mississippi to them.

The point was made to me, Mr. President, that a State which had school districts which had in fact unlawfully engaged in the gift, lease, or sale of real or personal property or services to a nonpublic elementary or secondary school or school system practicing discrimination on the basis of race, color, or national origin—to wit, a local educational agency, could be entirely barred from participation in the benefits of this particular appropriation.

I said that I did not so interpret it, that "a local educational agency" meant what it said, that the intention of the proviso would be directed to what a particular local educational agency did or did not do.

My understanding was that that did not characterize a State one way or the other unless the State itself was the educational agency which engaged in this practice, and that was not the disquiet or the question which was addressed to me. So, I interpret "a local educational agency" to mean exactly what the words say, a proviso insofar as it is a limitation to refer to that agency and no other in terms of the limitation which is imposed by this particular amendment.

The last point I should like to make relates to the reason why the $150 million is sought when the administration, in a message from the President on May 25, laid out a program for $1.5 billion of which it was felt $500 million would come in the 1971 fiscal year. I think that we now face a refinement of the concepts of the administration based upon the attrition of debate and discussion here. We have before us the fundamental concept that 10 percent of the amount which the President had requested should be made available for the purpose which I have described so that we might utilize that as a way in which to determine how effectively and with what end result or with what gifted administrative skill that 10 percent of $1.5 billion can be devoted to this general purpose, and that this will be instructive to us and instructive to the administration in determining how much further along the road we go and in what way we do it. This makes tremendous sense to me.

I think it is an excellent demonstration of policy. We all know, because that was the justification which was laid before the committees.

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Mr. JAVITS. Mr. President, I think that this represents a laudable and provident way in which to handle the matter. As I said, we all understand that a large part of the funds, if appropriated, will go to districts in the 17 Southern and border States which are under orders to desegregate or are imminently under orders within the recent past to desegregate.

I think that in terms of the public policy of America, this is the most direct way to deal with the situation, much more direct and much more sensible that the degree of time and energy which we devote to deciding who is right and who is wrong, about whether there is more or less actual racial isolation or racial imbalance, or de facto segregation in other parts of the country than illegal segregation as produced in these 17 States.

Coming as I do from one of the large States, and one of the great cities of America which is constantly made the yardstick in this kind of debate, I favor strongly the ultimate that we can achieve practicably in progress in terms of equal educational opportunity in States where by tradition and the social order this has been the biggest problem.

I do not care how invidious the comparison becomes thereafter. It may become more invidious than it is now. I still want to see a section of the country brought along into a field which is responsive to the deep feelings of many millions of Americans at the earliest possible time.

My willingness to sponsor this amendment, when I was asked to do so by the administration, was sparked by my deep feeling and conviction that progress in given areas in this particular area, in the southern part of the country, is bound to be beneficial and helpful to the whole Nation in terms of the future, in terms of morality, and in terms of the public tranquility, as well as in the terms of the example which it can set to everyone else in the country.

I would rather emphasize the positive than spend our lives debating the negative. Therefore, this makes these resources available in a way most helpful for the purposes which I feel so deeply and which I believe most of the country feel so very deeply as well.

Mr. STENNIS. Mr. President, one question, while it is at the forefront. To whom will this money be paid? Will HEW pay this money directly to the local school district, or will it be paid to the State department of education?

Mr. JAVITS. I understand that it moves to the local educational agency, school district.

Mr. STENNIS. Directly?

Mr. JAVITS. That is right. That is why I pointed out that there is no allocation formula. The provisos do not apply on any formula basis. This is a matter of assisting directly at the point of the hottest contact, as it were—to the local educational agency.

Mr. STENNIS. Did the Senator explain in his remarks why there were no hearings? This money is based directly on the President's recommendations that came in, as I recall, about the middle of April? I am advised by the Senator from Rhode Island that some hearings, I believe he said two sittings, have been held with reference to the authorization for the second instrument and perhaps the third one, too, but no finalization has been added? There has been a bill introduced, too, that sets out certain definitions. Why was no effort made, if the Senator knows, to hold hearings, get out some kind of direct authorization especially for this type of money? I was looking around, Mr. President, for the Senator from Rhode Island (Mr. Pell) who is chairman of that subcommittee. I would ask him if he were here.

Mr. JAVITS. Mr. President, the hearings on the administration bill are actually being held now by the Education Subcommittee, of which I am a member—indeed, I am the ranking member of the Labor Committee of which that subcommittee is a part.

Under the chairmanship of the Senator from Rhode Island (Mr. Pell), we have received a considerable amount of testimony already, which can very materially support the very amendment which is pending before the Senate.

I would be pleased, if the Senator so desires, to incorporate such testimony as we have already received—which is considerable, in the Record.

I have already incorporated the hearings held before the Committee on Appropriations, through its Supplemental Appropriations Subcommittee. Those hearings are already now in the RECORD.

They occurred at two hearings, at one of which Under Secretary Veneman testified.

Mr. STENNIS. Mr. President, my question was why were the hearings not held and a bill brought before the Senate to cover this first increment of $150 million so that there would be some kind of procedural requirements, some kind of definitions, and all the basis upon which the award was to be made.

I have just glanced at the bill that has been introduced on the second increment that speaks of those schools with racially isolated conditions that would receive this money.

First it talks about the segregated schools that are being desegregated. I know what that means in the South. But I did not know how that applied to the North because the North does not have any unlawful segregation there, as the Senator interprets it.

So I judge that is caused by the racially isolated areas, or words like that, that apply to schools outside of the South.

Why can we not have some guidelines or conditions or at least minimum requirements so that the administrator can go by them and we can go by them in our voting.

Is there any reason why that should not apply to the $150 million?

Mr. JAVITS. Mr. President, the bill which I introduced is not the authority for this $150 million, and therefore no such claim is made. And I guess that I am the best one to speak on it, as I am the sponsor of the bill for the administration.

The time did not allow any action on that bill or any justification under that bill. And none is sought.

So, I refer the Senator to page 741 of the hearings on the supplemental before the Appropriations Subcommittee.

Mr. STENNIS. Mr. President, if the Senator would yield, would he give me the number of that bill?

Mr. JAVITS. It is No. H.R. 17399. That is the supplemental appropriations bill, the one we considered on Monday.

Mr. STENNIS. Mr. President, I am talking about the Javits bill for the second increment.

Mr. JAVITS. It is right here. It is S. 3883. It was introduced as recently as May 26, 1970. That is why I say what I do about the time factor.

I would like to point out that the administration in respect of the hearings on the supplemental at page 541 of the testimony presented "basic policies for administering the emergeney school systems appropriations of $150 million now under preliminary consideration by the HEW." It is that memorandum which spelled out what was intended to be done with the money.

I have already explained the authorizing of the authorities respecting authorization, and it was made very clear by the testimony that this would be used essentially in respect of districts which were under order to desegregate or had very recently desegregated pursuant to order.

There was no relevance between this and the matter of racial imbalance or racial isolationism.

Mr. STENNIS. Mr. President, I was merely illustrating that the second increment in which the areas outside the South are to share does contain the conditions under which it is to be used. However, in this particular one, there are not any kind of limitations or minimum requirements or anything at all that a Senator must go by in voting, as I see it.

With all due deference, I think it means that the HEW could do what it pleased.

Mr. JAVITS. Mr. President, may I point out that the justification is a matter of record. It even goes into the detail of the people who will be used, their position slots, and their salaries. It is very detailed.

Might I point out, too, that the Senator from Mississippi is even more experienced a legislator than I am. And so he knows very well that my bill will look very little like the one I have introduced when it finally becomes authorization for any appropriation.

I do not think it is relevant to import into this particular appropriation anything except that this is a general characterization of the overall program of the President. And we must state, very properly, that this $150 million will move along that road and give us a pretty good idea as to what they are really doing and how well they are likely to administer a very much larger bill if we let them have it.

For that reason, I consider it to be an added benefit that we get out of acting at this time.

Mr. STENNIS. Mr. President, the Senator from New York is a master of speech. However, he does not specify how this money will be used.

The Senator referred to me as an experienced legislator. He is far better and more experienced than I. However, I believe I do have more experience with reference to this process of the desegregation of schools, because they did desegregate Mississippi. They do not have that experience in New York.

So we know how that works. They hold the money bag and tell someone what he must do and he has to do it.

Mr. JAVITS. Will the Senator allow me to interrupt? One does not have to do it if he does not want to. He does not have to do a thing. One can be just as tight and hardnosed as he likes,

Mr. STENNIS. That is not an answer, though, to providing for the improvement of education.

Mr. JAVITS. I hope so.

Mr. STENNIS. We are entitled to know when we have to deal with HEW and when we have to deal with the Department of Justice. And now we have to deal with both of them. I have been talking to them both today about cases.

I just find here that we do not have these fundamental principles involved.

I want to say this about this matter, that in spite of the Senator's diligent work, it is subject to a point of order, and at the right time I would like to make that

point of order. However, the Senator from Louisiana is on his feet and the Senator from Alabama is also. I will not ask any more questions at this time.

Mr. ELLENDER. Mr. President, will the Senator from New York tell us where he obtains the authority for the appropriation of $150 million.

Mr. JAVITS. Mr. President, I will read the authority to the Senator. The authority is found at page 1 of my amendment, beginning at line 3 and going over to page 2 where it ends in the middle of line 2, and it is composed of the following——

Mr. ELLENDER. Under the law cited by the Senator in his amendment, for what use under that law can this money be used?

Mr. JAVITS. The money will be used in accordance with the authority. It cannot be used outside the authorities. I will be glad to read to the Senator the specific authorities in each law.

Mr. ELLENDER. I have that before me.

Mr. JAVITS. That is all the money can be used for.

Mr. ELLENDER. I wish to read some language to the Senator. The law provides for community development programs.

Mr. JAVITS. The Senator is correct.

Mr. ELLENDER. Very well. Economic Opportunity Act of 1964, title 2. That is what the Senator is depending on?

Mr. JAVITS. The Senator is correct.

Mr. ELLENDER. Urban and rural community action programs.

This title proposes to help focus available local, State, private, and Federal resources upon the goal of enabling low-income families and low-income individuals of all ages in rural and urban areas to obtain the schooling, knowledge, motivation. Privately funded under this authority are Headstart and Follow Through, among others.

Is that what this money is to be used for?

Mr. JAVITS. It will be used to the extent the authorization is available for those purposes.

The Senator, I think, read a digest. I am going to read the law. I know. That is a digest.

I am going to read the law to the Senator. The digest is not as good as the law. The Senator will find there is very ample room in this law for the purpose of expending $100 million, which is unappropriated, for aid and for assistance in ways which will aid the desegregation process.

Mr. ELLENDER. But that is not the purpose for which the law the Senator cited was placed on the statute books.

Mr. JAVITS. There are many laws which may have a different motivation, but the courts have held since I was a boy that the law means what it says regardless of our motives when it was placed on the books. This is one of those laws. I refer the Senator to the authorities.

I am now going to read section 102(b), authorization for appropriations in Public Law 91-177. That section reads as follows:

"Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this section, of the amounts appropriated pursuant to subsection (a) of this section * * * the Director shall for each fiscal year reserve and make available not less than * * *"

So much money—

"for the purpose of local initiative programs authorized under section 221 of the Economic Opportunity Act of 1964 and the remainder of such amount shall be allocated * * *"

There is a long list of allocations relating to work training programs, special impact programs, special work and career development programs, Head Start, Follow Through, comprehensive health, emergency food and medical services, family planning, senior opportunities and services, rural loans, migrant and seasonal farmworkers, and so forth.

Mr. ELLENDER. Those are the purposes for which this money shall be used for, and not to desegregate the schools.

Mr. JAVITS. The Senator is quite wrong, for this reason. If the purposes which are authorized promote the desegregation process, then the Department will be able to use those resources for those purposes which will promote the desegregation process and the Department fully intends to do that and feels there is ample latitude under the authorization for that purpose.

That is why it invoked that very section; it invoked others as well, but it invoked that section.

Mr. ELLENDER. As I understand the President's message asking that this money be appropriated, he had in mind the bill that was going to be enacted and not existing law.

I will read from the President's message.

Mr. JAVITS. What date is it?

Mr. ELLENDER. The President's message asked for $150 million.

Mr. JAVITS. That was in May.

Mr. ELLENDER. Yes, it was May 25.

Mr. JAVITS. Very well.

Mr. ELLENDER. This message is based on a bill to be enacted—the bill that the Senator referred to awhile ago, which he is now handling for the purpose of holding hearings—and not the law from which he quoted.

I read from the President's message:

"I ask Congress to consider a proposed supplemental authorization for $150 million in budget authority. These funds are needed to provide immediate assistance to school districts which must desegregate by the fall of 1970. These desegregating districts face urgent needs—"

It is my understanding, and I am sure the understanding of the Senator from Mississippi that the sum of $150 million is to be made available and to be spent under the provisions of a bill that the Senate will consider and not under existing law.

Mr. JAVITS. Mr. President, the Senator having invoked an authority cannot defy its plain words. The Senator gave as his authority the letter the President dated May 25, 1970. That letter states "Under existing statutory authority" and this is "existing statutory authority" and the President knew very well on May 25 when he sent us that letter that there was no other statutory authority, under his ideas, for $150 million, except the existing ones, and the existing ones according to his own department and the advice he got, including the one to which I referred, title 2(b) of the Economic Opportunity Act of 1964.

The department itself feels as follows:

That the broad authority of title 2(b) to establish sound community action programs can be used to fund among others, the following kinds of educational activities:

First. Minor remodeling of school facilities to improve the quality of physical plant;

Second. Parent or community organizations to assist in developing community support for educational change;

Third. Administrative costs incident to reorganization of school systems;

Fourth. Remedial materials, special personnel and health and nutrition services for disadvantaged children;

Fifth. Paraprofessional assistance for classroom teachers.

So they invoke this because this is the kind of things they believe will assist in the educational process; they invoke this as the President said, as existing statutory authority.

Mr. ELLENDER. I have no quarrel if the money is used for that purpose.

Mr. JAVITS. It cannot be used for anything else. Incidentally, I hope the Senator heard me. If not, I would like for him to read this letter from the department. A part from the letter, the amendment I read begins on line 2, page 1:

"For assistance to desegregating local educational agencies as provided—"

So the money is confined to purposes consistent with the authorization and I have specified those, for the purpose of assistance to desegregating local educational agencies.

This will not be used for broad scale antipoverty programs because that would be contrary to the law as I have read it.

Would the Senator read this letter from Secretary Veneman. He might find it useful.

Mr. ELLENDER. Has the Senator finished?

Mr. JAVITS. I will yield again if the Senator wishes.

Mr. ELLENDER. Why is it that in the third paragraph of the President's message it is stated:

"Another $350 million will be requested for fiscal year 1971 upon enactment of the proposed Emergency School Act of 1970, which I described in my message to the Congress of May 21, 1970?"

That is the act or bill that the Senator will hold hearings on.

Mr. JAVITS. The Senator is exactly right. We are holding them.

Mr. ELLENDER. Will not $150 million be used in the same manner as is proposed in the legislation now under consideration?

Mr. JAVITS. Not necessarily, because I do not know what that act will say when we get through. The fact is we do not have any such act on the books. Presidents can ask and they do ask but we dispose.

I think the general idea around here, as I feel the sentiment of the Senate, is that we would like to see what they do with the money and how they use it before we get into a big-scale operation, and even before we finalize the authorization bill on which we are holding hearings.

So I will say to the Senator from Louisiana that I personally consider, aside from the fact that it is the general road the President wants us to travel, that this $150 million sui generis is not necessarily based on the administration bill, because we do not know what is going to happen to that bill. We may change our minds. This is based on the outline of what they wish to do as laid down before the Appropriations Committee, which I am sure the Senator, who is very diligent, has gone over very carefully, and it is based on the authorities which are contained, as the President has said, in existing law.

Mr. ELLENDER. The bill the President sent up, and on which hearings will soon be held——

Mr. JAVITS. They are being held.

Mr. ELLENDER. Very well. What is the purpose of that act? Can the Senator tell us?

Mr. JAVITS. The purpose of the act is to authorize $1.5 billion—if we pass this amendment it will be $1.350 billion—for the purpose of assisting in the desegregation——

Mr. ELLENDER. Right.

Mr. JAVITS. No; not yet. In both illegal and de facto segregation in school districts all over the United States.

The purpose of this particular $150 million is to zero in on de jure segregation problems of school districts which have de jure school desegregation situations and which have been ordered to desegregate, or which have recently desegregated pursuant to order or agreement of Government departments.

It is a rather different situation.

That would be included in the larger bill, but the larger bill would go to a broader area and in a different direction, in addition to which, I do not know what is going to happen to it.

The case I make before the Senate is that the President asks us to appropriate 10 percent of what he thinks the whole program requires, for its general purpose or its general thrust, but asks for authority so we can get to working on the problem as quickly as possible and, second, the experience that it will give in a very practical way.

Mr. ELLENDER. Mr. President, I simply wanted to try to demonstrate to my good friend from New York that the programs to which the money he is now asking for would go are community development programs and personal development programs, but not to desegregate, as is being contended for by the Senator.

I do not think it was ever contemplated, or intended under the law that the Senator is relying upon for authorization, that the money would be used for the purposes he is now referring to.

There is no doubt that the President had in mind that the $150 million was going to be used for the same purposes that the proposed bill the Senator is handling will provide, and not under the laws that the Senator cited in his amendment.

In asking for an expenditure of $1.5 billion heretofore referred to the President had no intention of using $150 million of that sum to enforce de jure segregation and $1.35 billion to enforce de jure and de facto segregation, as is contended by the senior Senator from New York.

Mr. JAVITS. Mr. President, in the first place, every lawyer finds authority where he can. Years ago, when I was very active in the practice of law, I used to have a client who made many millions of dollars, although he was hardly literate. He had a great expression. His expression was, "There's always a right way to do right." So every lawyer, naturally, will seek authority where he can find it, and the fellows who drafted the law or wrote the decisions may never have dreamed that the authority would be extended to the given purpose for which it was properly invoked.

But we do not go that far here. The fact is that one of the aims of the Economic Opportunity Act is to afford better educational opportunity; that the whole point about desegregation is that it is supposed to offer better educational opportunity in the Economic Opportunity Act, for example, section 221(a), refers to authority to grant financial assistance in order to attain an adequate education.

In addition, the utilization of this particular authority is locked in by the words of the amendment which limit it to assistance for a given purpose and by the representation of the administration as to precisely the way in which the authority admittedly existing in title II–B of the Economic Opportunity Act, if used—and

they must use it only that way—will contribute to the desegregation of local school districts.

I specified those, and I will repeat them:

"(1) Minor remodeling of school facilities to improve the quality of physical plant;

"(2) Parent or community organizations to assist in developing community support for educational change;

"(3) Administrative costs incident to reorganization of school systems;

"(4) Remedial materials, special personnel and health and nutrition services for disadvantaged children;

"(5) Paraprofessional assistance for classroom teachers."

Mr. STENNIS. Mr. President, will the Senator yield to me for a brief question?

Mr. JAVITS. Certainly.

Mr. STENNIS. The Senator has developed his argument, and I would like to call the amendment to the attention of the Presiding Officer.

My first question is that this is appropriation bill language, of course. The first clause, stating the purpose, states, "for assistance to desegregating local educational agencies"—in other words, that is the purpose of the money that comes at the last—and the money refers to these four or five different authorization acts. Is that not correct, Senator?

Mr. JAVITS. That is correct.

Mr. STENNIS. I think the Senator has explained his amendment, and we have had some colloquy. Will the Senator yield for the purpose of testing this language, to make a point of order?

Mr. JAVITS. Certainly.

Mr. STENNIS. I thank the Senator. That will get us down——

Mr. JAVITS. That will get us down to cases; that is right.

Mr. STENNIS. I call the Chair's attention to the wording of the amendment, and I make the point of order that this amendment constitutes legislation on an appropriation bill, and is therefore out of order for the following reasons, among others:

The wording of the amendment is that it is for assistance to desegregating local educational agencies as provided under part D, and so forth, and goes on to name the sum of $150 million. It points out on its face that it has taken this authority from Tom, Dick, and Harry, one authorization bill after another. There is no common cause or common theme among those different authorizations.

If I interpret it correctly, I notice one is the Cooperative Research Act. As I remember, that is in the agriculture appropriation bill. I believe there is a title in the agriculture appropriation bill for the Cooperative Research Act. There may be another one.

But anyway, one is title IV of the Civil Rights Act. Then title V of the Higher Education Act, the Elementary and Secondary Education Act of 1965, and so on down the line to title II of the Economic Opportunity Act of 1964, as amended.

My point, Mr. President, is that actually there is no authorization yet for the purpose that is stated at the beginning of this amendment. It is a new program, for a new purpose. The primary purpose here is to assist, as I understand it, in the desegregating of schools. They go to four or five different kinds of acts here—and I am going to be brief—to find the authority and find the conditions under which the money could be spent.

The applicant would hardly know how to make an application and prove his case. An administrator would hardly know how to pass on the authority, if it can be called authority. It just does not fit the purposes of the amendment.

This is just lock, stock, and barrel a general program. The only reasonable interpretation of it is that HEW can do what they please, and that means that those who work at the school level will largely control the disposition of the money.

Therefore, the authorization fails because of its ambiguities and its lack of certainty and lack of being specific. Until the money is more definitely authorized for the purpose for which it is to be spent, Congress does not have the authority to appropriate the money.

Mr. JAVITS. Mr. President, may I be heard before the Chair rules?

The PRESIDING OFFICER. The Chair will indulge the Senator.

Mr. JAVITS. Mr. President, in the first place, I should like to correct the Senator's reference to the Cooperative Research Act. The Cooperative Research Act is Public Law 531 of the 83d Congress. Section 2(a) of that act is headed "Educational Research and Research Training." So we are not talking about anything in the agriculture statutes. Even if we were, it would not make any difference; but the fact is that we are not.

Second, Mr. President, I should like to cite a precedent that it is not at all unusual for authority, under the Economic Opportunity Act, to be utilized for appropriations in an education bill. The precedent, Mr. President, is the very same appropriation, the Health, Education, and Welfare appropriation for fiscal 1969, which became Public Law 90–557, which included an appropriation for the Office of Education under the heading "Higher Educational Activities," and the appropriation language was "and for grants under part (c) of title I of the Economic Opportunity Act of 1964, as amended."

In addition, Mr. President, education is clearly specified as one of a wide variety of governmental activities supported under the Economic Opportunity Act; and, indeed, it is widely considered that appropriations for the Office of Economic Opportunity are, among other things, directly related to children and to the education of children.

Finally, Mr. President, the only thing that the purport of this amendment has to demonstrate to the Senate in my judgment, is that there are authorizations under existing statutes—incidentally, these are the words of the President—which cover activities that are germane to the purpose of the appropriation, and that there remain authorizations for which there has not been appropriations within those acts.

Mr. President, it seems to me that we have demonstrated that fully with respect to the authorities which we have cited in the amendment—that is, the authorization authorities for the $150 million—including the reference to the Economic Opportunity Act, where I have specified in the debate the precise activities authorized under the Economic Opportunity Act directly contributing to the purpose of this appropriation.

For all of those reasons, Mr. President, I believe that the point of order is not well taken.

* * * * * * *

Mr. STENNIS. In looking at the list of authorizations in this pick-and-pack-and-pay-and-carry-away system, I find here, in the Congressional Record of June 24, 1970, page S. 9756, where the Senator from New York very kindly put in the Record the sources of these alleged authorizations.

First is this "Community development program." There is $100 million taken from that title of the Economic Opportunity Act on urban and rural community action programs. Mr. President, those headings just do not match with education or desegregation of schools, I submit.

The next one there is $9 million, "Personnel development programs." That is the second item listed here. With "Community development programs," that accounts for $109 million of the money.

The next one does have the word "education." Education Professions Development Act, part D.

Then the third numbered item in the list here, is Major Demonstrations, $14 million, from the Cooperative Research Act. It says:

"This Act authorizes projects for research, surveys, and demonstrations in the field of education, and for the dissemination of information derived from educational research."

There is no reference there to desegregation of schools.

Fourth, "Dropout prevention," $5 million. That is the Elementary and Secondary Education Act, section 807, authorizing "demonstration projects involving the use of innovative methods, systems, materials, or programs which show promise of reducing the number of children who do not complete their education in elementary and secondary schools."

The next item is "Technical assistance," $15 million, from the Civil Rights Act of 1964. This is the first time that the word "desegregation" is mentioned.

May I have the attention of the Senate? This last item here is the only time that the word "desegregation" is used, and still they are trying to justify the authorization of $150 million from all these other items.

So I respectfully submit to the Chair that, in spite of the good intentions of the Senator from New York and others, this does not fulfill the minimum legislative requirement.

Mr. ERVIN. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Chair is indulging Senators. The Chair is prepared to rule. Did the Senator from North Carolina wish to be heard?

Mr. ERVIN. I wish to make this point——

The PRESIDING OFFICER. The Chair recognizes the Senator to make the point.

Mr. ERVIN. The Senator from Mississippi has pointed out that none of these acts which are cited in the amendment have any reference to education of this

nature except the Civil Rights Act of 1964. That act only authorized technical assistance, an appropriation of $15 million, and certainly an authorization for $15 million which has long since been used up by other appropriation bills cannot justify an appropriation of $150 million.

I submit that the Chair should sustain the point of order.

The PRESIDING OFFICER (Mr. Gravel). The Chair will now rule. The Chair is ruling on two points here—first, that this is a new item, but that it does comply with rule 16, paragraph 1. The Chair will read the language in the phrase at the end of that paragraph: "or proposed in pursuance of an estimate submitted in accordance with law."

The sum in question is pursuant to a budget estimate that was submitted to the Senate in Senate Document No. 91–83, and provides for that very purpose the sum of money.

As to the second facet, it is the opinion of the Chair that this is strictly a limitation on appropriations provided for in this bill. The language in no way changes existing law, nor does it grant any new legislative authority. It merely places limitations on the use of funds provided for in this bill.

This amendment is considerably different from the one that the Chair ruled out at an earlier date.

Mr. STENNIS. This amendment is what?

The PRESIDING OFFICER. This amendment is different from the one that was ruled out on an earlier date, on the supplemental.

Mr. STENNIS. Mr. President——

Mr. JAVITS. Mr. President, do we have the ruling?

The PRESIDING OFFICER. The point of order is well taken.

Mr. STENNIS. Mr. President, I respect the sincerity of the Chair and the counsel of the Parliamentarian. I submit, with great deference, that it is an erroneous ruling, but I take it as a ruling and do not propose to appeal.

Does the Senator wish to speak further now?

Mr. JAVITS. Mr. President, I think we ought to have the yeas and nays on this amendment. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JAVITS. I am prepared to yield the floor.

Mr. STENNIS. Mr. President, I have some other remarks, but if other Senators wish to speak at this time, I will yield the floor for the time being.

Mr. ERVIN. Mr. President, I send to the desk three amendments and ask that they be printed and lie at the desk until they are called up. They are three perfecting amendments to the amendment offered by the distinguished Senator from New York. I have written them out in my own handwriting, and to assist others, I will read them.

The distinguished Senator from New York said that this was to implement the program of the President. Since the President has expressly stated that he is opposed to the busing of schoolchildren for the purpose of altering the racial composition of schools, the first amendment would be this:

"On line 15, page 2, strike out the word 'or.'

"On line 19, page 2, change the period to a semi-colon, and add the following thereafter: 'or (d) to finance the busing of school children from one place to another place or from one school to another school, or from one school district to another school district to alter the racial composition of any school.' "

I offer this as a perfecting amendment, because the President said distinctly in an interview which he gave during the campaign in Charlotte, N.C., that he was opposed to the busing of children for the purpose of altering the racial composition of schools.

He has also stated that he is in favor of the neighborhood schools, so the second amendment I have sent to the desk is this:

"On line 5, on page 2, strike out the word 'or.'

"On line 19 on page 2 change the period to a semicolon, and add the following thereafter: 'or (d) to deny any child the right or privilege of attending the school nearest his home which is open to children of his age and educational standing.' "

Since the Senator from New York invokes title 4 of the Civil Rights Act of 1964 in his amendment, the third amendment I have sent to the desk reads as follows:

"Strike out the word 'or' on line 15 on page 2, change the period on line 19 of page 2 to a semicolon, and add the following words thereafter: 'or (d) to finance any activity which is inconsistent with any provision of title IV of the Civil Rights Act of 1964.' "

I ask that these amendments be printed and lie at the desk until called up.

Mr. STENNIS. Mr. President, will the Senator yield briefly?

Mr. ERVIN. I yield the floor at this time.

Mr. STENNIS. Mr. President, I had in mind as an amendment now to strike all that part of the amendment after the words "Economic Opportunity Act of 1969"—to strike everything beginning with the words *provided further*, that no part of the funds contained herein shall be used," and so forth.

I submit that that amendment could well come before the amendments offered by the Senator from North Carolina, because that leads into another aspect of the bill.

The PRESIDING OFFICER. Does the Senator wish to call it up?

Mr. STENNIS. Will the Chair indulge me for a moment?

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. Gravel). Without objection, it is so ordered.

Mr. JAVITS. Mr. President, it seems to me that the parliamentary situation now dictates we understand what particular amendments, if any the Senators who oppose my amendment may desire to carry forward, as I wish to take seriously to heart the admonition of the distinguished Senator from Washington (Mr. Magnuson) that we have gone over a lot of the ground in substance and it really should not be repeated. I think I have said everything I need to say or should say, and in view of that admonition about the essence of the amendment I have proposed, and the fundamental question that it is properly introduced and stands up against the point of order which has now been decided, I hope very much that the Senator from Mississippi (Mr. Stennis), the Senator from North Carolina (Mr. Ervin) and others interested, may go forward with what they desire to propose.

Mr. COTTON and Mr. STENNIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi is recognized. Does the Senator wish to call up his amendment?

Mr. STENNIS. Yes, Mr. President, I have the floor. I shall be glad to yield to the Senator from New Hampshire——

Mr. COTTON. No. Go right ahead. I have a parliamentary inquiry afterward.

Mr. STENNIS. All right.

Mr. President, I move that the amendment offered by the distinguished Senator from New York—that everything in the amendment be stricken out beginning in the middle of the amendment with the words "provided further, that no part of the funds contained herein shall be used (a) to assist a local educational agency," and so forth—those words and the rest of the amendment.

The PRESIDING OFFICER (Mr. Gravel). The clerk will report the amendment.

The ASSISTANT LEGISLATIVE CLERK. On page 2, line 7, beginning with the words "provided further," down to and including line 19.

Mr. STENNIS. Mr. President, I want to call up my amendment now, but first will yield to the Senator from New Hampshire without losing my right to the floor.

The PRESIDING OFFICER. Without objection, the Senator from New Hampshire is recognized.

Mr. COTTON. Mr. President, do I correctly understand from the distinguished Senator from Mississippi that he wishes the first vote to come on his first motion——

Mr. STENNIS. To strike.

* * * * * * *

Mr. President, I direct attention now to line 7 on page 2 of amendment No. 737.

My amendment would strike out that part and the part that follows. This is an emergency bill, it said, and it is put together by various authorizations. It has been held, on the point of order, to be invalid, so that brings us right to the issue that this amendment is before this body. It is to assist in desegregating schools. It is to assist in places where the funds may be needed the most and that includes the poor schools, those without adequate equipment, or which have adjustments which have to be made.

The part we propose to strike out turns right around, then, and goes to putting penalties on someone. That is not the way we really go out to try to help schools or people and bring the level up. It is not only putting a punishment on it but the language still is retroactive in application.

I said here, the night before last, that I would not object to some of this if it was just to be prospective after this becomes law, if it does. But now we want to go back and punish someone because, maybe, a school district has sold a

school building and maybe that building was ordered closed by HEW's plan, but if they sold that to someone to try to start a private school, then the mandate of the amendment would be that that little district would never be available for any of this money.

Mr. President, that is something that has happened in the past. And no one except those who have been through it know about the confusion, the dislocation, the necessity for the faculty, the trustees, and everyone concerned to make all kinds of adjustments and try to get a new start.

The school terms were interrupted, some of them for 3 months, some for 4 months, some for 5 months, some for 6 months, and on up. I know of one in which this drastic change was required just 7 weeks before the last term was over.

If we come back here now and say that we are legislating for the neglected, the downtrodden, the lame, and the poor, we cannot then turn around and go to pestering them with these penalties and reprisals and eliminate them from being eligible.

I do not know of any one case in my State where they sold a school building to any group that was trying to form a private school. That might have happened. I do not know. But I am not trying to protect any individual situation. There is a principle involved here.

Mr. MONDALE. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. MONDALE. Mr. President, we were advised that on September 4, 1969, the Madden School in Leake County, Miss., was sold to a private source for $1,500. It was a 10- or 12-year-old building on 2 acres of land. It had 10 classrooms. It was then resold to a private segregated school for $10.

We have examples like this for Louisiana and elsewhere where not only schools, but also school buses, desks, and textbooks have been lent or given to private all white schools.

Mr. STENNIS. To what would the penalty apply? Would it apply to the Madden School, accepting the facts stated by the Senator to be true. And I do not know and he does not know that they are facts. But accepting that as the case, what would happen to Madden School under the amendment?

Mr. MONDALE. Mr. President, permit me to say that the information on this school and the others to which I made reference is based on direct testimony presented by the National Education Association. That is the basis of the facts which I presented.

The amendment which the Senator from New York (Mr. Javits) offered includes a provision which would prohibit any of the $150 million from going to a school district which transferred public property to a private segregated school.

Mr. STENNIS. Mr. President, if these facts are true, Madden School is perhaps part of the school district of that entire county. Under our system, we have county school boards, and with some municipal exceptions, they have jurisdiction throughout the county.

Madden is a very small place, as I recall. I do not know its population.

To whom would this penalty apply—the school board or to all of that county? Perhaps there is no Madden School now. But to whom would the penalty apply?

Mr. MONDALE. Mr. President, I would say that is not a penalty. It denies a reward to a school district that gives away public property to a private source in a way that is clearly unconstitutional. And it would prohibit such funds from going to local education agencies as defined by the Department of Health, Education, and Welfare.

Mr. STENNIS. Mr. President, my question is would it apply to the entire county? This school is just a small part of that county.

Mr. MONDALE. It would apply to the local education agency as defined by HEW. I am not familiar with that particular school district.

Mr. STENNIS. Mr. President, we are entitled to know whether it applies to that entire county or just to the Madden School. I think that every Senator here is entitled to know where that penalty would apply.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. STENNIS. Mr. President, the Senator from North Carolina asked me to yield. I will yield to him first and will yield later to the Senator from New York.

Mr. ERVIN. Mr. President, does not the Senator from Mississippi understand by the statement made by the Senator from New York that this money is to be applied for the benefit of schoolchildren, black and white?

Mr. STENNIS. Yes; the Senator is correct.

Mr. ERVIN. So, here is the Madden School, accepting the statement of the Senator from Minnesota as being correct. The school is gone. The school building

is gone. And so, the little children who fall within the jurisdiction of the local education agency which has control of the schools will be denied the benefit of the money, even though that local education agency may be composed of a different group of men at this time. The Javits amendment will deny them the benefit of any of the funds to be appropriated for the purpose of educating the little black and white children in that area.

Mr. STENNIS. Mr. President, the Senator is entirely correct. Madden is just within a rather large populous county.

Mr. ERVIN. Mr. President, we cannot get information as to whether this school district or the whole county is going to be denied the benefit of the funds.

Mr. STENNIS. The Senator is correct.

Mr. ERVIN. That is the kind of amendment we have here. It is offered in the name of education for the black and white children in the South that its supporters profess they are so zealous about. They will deny them the benefit of these funds if a local education agency has done these acts, even though that agency may not now be composed of the same group. It might be composed of an entirely different group of men from the ones who did the alleged wrong. The proponents will let the innocent suffer for the supposed sins of the guilty.

Mr. STENNIS. The Senator is correct.

Mr. ERVIN. Mr. President, that is all done in the name of education. The amendment will deny them funds for their education. Is that not correct?

Mr. STENNIS. That would be the effect of it. And that is why I made the motion to strike.

Mr. ERVIN. And this will be done by an ex-post-facto law.

Mr. STENNIS. The Senator is correct.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. STENNIS. Mr. President, I will yield first to the Senator from Alabama and then to the Senator from New York.

The PRESIDING OFFICER (Mr. Long). The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, I would like to ask the Senator from Mississippi if it is not a fact that if his amendment is agreed to, it would still leave in the Department of Education the discretion to apply these very same limitations and prohibitions contained in the Javits amendment if, in their judgment, they should be applied?

Mr. STENNIS. I do not think there is any doubt whatsoever about it, because it is authorization. It is as high as the heavens. There is no topside or bottom to it.

Mr. ALLEN. If they wanted to apply the very same limitations contained in the Javits amendment, they could do so, even though the Senator's amendment is agreed to.

Mr. STENNIS. The Senator is correct.

Mr. ALLEN. Mr. President, I have one further question. With respect to the Whitten amendments that we have voted on from time to time here in the Senate, is it not true that they sought to put limitations on the Department of Health, Education, and Welfare and on the Office of Education as to the use for certain purposes of the funds appropriated by that act.

Mr. STENNIS. The Senator is correct.

Mr. ALLEN. And is it not also true then that this amendment of the Senator from New York also seeks to put limitations on the Department on the uses to which the funds appropriated by this bill shall be put. Is that not correct?

Mr. STENNIS. The Senator is undoubtedly correct. That is the effect of it.

Mr. ALLEN. And the Senate in its wisdom saw fit to reject the Whitten amendments which did place those limitations on the Department. And would it not then be logical that the Senate in the exercise of that same wisdom should reject these limitations contained in the Javits amendment?

Mr. STENNIS. Logic and consistency would demand it, yes.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. STENNIS. I yield now to the Senator from New York.

Mr. JAVITS. Mr. President, I think that Senators are entitled to know what we mean by a local education agency. I think they are entitled to know what this proviso means. I could give the Senators my view of it.

I think that the local education agency referred to in the amendment means the one who did what the amendment hopes it would not do—transfer property for services in order to aid an unlawful process.

If that is a small school board, then that small school board would be unable to get part of these funds.

If it is the whole State then the inhibition would go to the State; if it were a county school agency, then it would go to the county. As to what is a local school agency depends on the State. As the Senator from Mississippi pointed out, the way in which the State is organized, and the State has that duty, determines that question, and that is the way it is applied. That would be the application of this proviso.

I think Senators are entitled to my views on the ex post facto matter. I believe, with the Senator from Tennessee (Mr. Baker), who unfortunately is not in the Chamber at the present time, but who made a good point, that it is ex post facto unless it is unlawful, but if it is unlawful then it is not ex post facto, because if it is wrong when committed, that wrong continues. That is basic hornbook law. I agree with the Senator from North Carolina. Whether sustained on a point of order I would not want to do anything that was ex post facto so that the innocent person who did something when it was lawful would find himself trapped. I think the intercession of the Senator from Tennessee cures that defect.

Mr. ERVIN. Mr. President, could the Senator from Mississippi ask the Senator from New York who is supposed to get the benefit of this money, whether it is the school board or the children?

Mr. STENNIS. That is a good question. Are we legislating for the school board or for the children?

Mr. JAVITS. We long ago decided when the same argument was made on the Civil Rights Act in 1957. I have been here a long time. We long ago decided that, yes, it may be that some black children would be denied opportunities which they might otherwise have if we did not press this matter, but in the interests of our Nation we decided this was the best policy for them and their progeny; and those marginal cases had to be decided in favor of the desegregation principle.

I would not predict one could not find a particular instance where a black child, or 10, 20, or 30 black children did not do as well in terms of education, but I would warrant if one were to take a vote among black people—adults and children alike—it would be found that something like 100 to 1 or better would say they would want, at long last, if they could get it, an equal break in terms of education with everybody else.

Mr. ERVIN. Mr. President, will the Senator from Mississippi yield to me so I can ask him a question to be asked the Senator from New York?

Mr. STENNIS. I yield.

Mr. ERVIN. I would like to ask the Senator from Mississippi if he will ask the Senator from New York if this amendment will not deny children of that area any benefit of these funds, even though the members local agency which perpetrated what it deems to be wrong have been supplanted by other members.

Mr. STENNIS. Suppose the board did commit a moral wrong and sold the building for a nominal sum. This amendment would cut them down. But suppose they did it for $10 and they are succeeded by another board with the opposite view. That is an illustration as to how this could go too far.

Mr. JAVITS. I assure the Senate that this amendment obtains for 1 year. It is for $150 million, in what will be a much bigger program.For that period and the amount of money involved, considering the size of the problem, I do not think I need to shrink from any possible investigation which may be due to an individual board.

I will join with the Senator when we learn more about awarding any board that undoes what a previous board did wrong. I think we need to go into the equities of the case.

Mr. STENNIS. I want to make clear that these school districts in my State, at least most of them are countywide and have jurisdiction over all the schools in the county, 15, 17, whatever the number is, and some municipalities, the largest ones, are excepted. The ar[illegible]school is a relatively small school, and under this proviso, if it were sold I think it would require school board action, but it is very minor. At the same time we were being ordered to close up the building—do not use the school anymore, close it up, and the courts ordered "Close school B, it will no longer be used." The court then adopts a position which says that the school shall be abandoned. I know that happened because I dealt with a school board to which that happened. Of course, the people acted under distress. I am willing to have this prohibition to any future acts, anything in futuro after enactment.

Mr. TALMADGE. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. TALMADGE. As I read the amendment the penalty provision does not provide any penalty whatever to students of the private schools but only to those remaining in the public schools. Is that the Senator's interpretation?

Mr. STENNIS. That is a good point. It is not getting at the ones in the private schools.

Mr. TALMADGE. Mr. President, will the Senator yield further?

Mr. STENNIS. I yield.

Mr. TALMADGE. It would not be getting at the fugitives, but those who remain in the public school systems.

Mr. STENNIS. That is correct. I think very little of this happened anywhere and I did not know of this incident the Senator brought up.

Mr. TALMADGE. Certainly, it will not remedy the situation by shooting the innocent instead of the guilty, will it?

Mr. STENNIS. It is the wrong approach.

I wish to call attention to line 13, paragraph (b) which provides: "to supplant funding from non-Federal sources which has been reduced as the result of desegregation or the availability of funding under this head;"

There is a classic example of where HEW, in making its inquiries and adjustments can take care of any attempted or threatened situation of that kind, because in working this out with the school board to determine the source of income, and if it is going to be a supplemental fund, those things are all worked out in advance and under some operations of State law there is some reduction which automatically happens.

In our State, appropriations by the State legislature are on the basis of average daily attendance. Those records are all sent in and the money is distributed under the law. So here is a school that would have some reduction because of reduced average daily attendance and it would be a question of fact if it was prompted by any of these laws. That is what HEW would be doing.

On page 2 at line 2 it is provided, that no part of any funds appropriated herein to carry out programs under title II shall be used to calculate the allocations (c) to carry out any program or activity under any policy, procedure, or practice that denies funds to any local educational agency desegregating its school under legal requirement, on the basis of geography or the source of the legal requirement.

Frankly, I just could not understand the language. I do not know what situation it is designed to meet. I am glad to yield to the Senator from Minnesota to answer as to paragraph (c), if that is a part of his amendment.

Mr. MONDALE. Mr. President, I thank the Senator from Mississippi. In a moment I hope to get the floor in my own right, but it is true that the nationwide thrust of paragraph (c) was included in the amendments I had intended to offer to the supplemental bill.

Mr. STENNIS. It was not included?

Mr. MONDALE. It was.

Mr. STENNIS. It was?

Mr. MONDALE. Yes.

Mr. STENNIS. I am not commenting on it now, because I have not understood what it means.

Mr. MONDALE. May I respond to that just a moment?

Mr. STENNIS. Yes.

Mr. MONDALE. The purpose of subpart (c) is to make the $150 million program, for which we might appropriate money here tonight available to schools desegregating under legal requirement regardless of their location or the source of the legal requirement, and not just limited to the 17 Deep South and border States, whatever that means.

That limitation does not appear in the legislation. It was simply the expressed intent of the administration before the Appropriations Committee to limit this program to the 17 States.

Some question was raised here the other night as to which 17 States. We have not been told. I do not know. This should be a national bill, and I agree with the Senator from Mississippi that this legislation should have a national thrust to it. I personally feel very strongly about it.

Mr. STENNIS. I thank the Senator, but paragraph (c) is not carrying out the idea of making it a national bill.

Mr. MONDALE. Paragraph (c) would assure that any school district desegregating under a legal requirement—wherever the school district is located or whether it is desegregating as the result of State or Federal law—would be eligible to apply for assistance under this appropriation. The administration has testified that this appropriation would be restricted to school districts desegregating under title VI of the Civil Rights Act of 1964 or Federal court order in the 17 Southern and border States. We do not believe that school districts such as Pasadena, Calif.; Denver, Colo.; South Holland, Ill.; or Pontiac, Mich.; which

are desegregating under a Federal court order, or Los Angeles, Calif., which is desegregating under a State court order, should be denied eligibility for assistance under this appropriation.

It is important to understand exactly what amendment No. 704 does, and what it does not do. It does require that a school district desegregating under a legal requirement not be denied eligibility—in other words an opportunity to apply for assistance—solely on the basis of either the location of that district, or the source of the legal requirement. It does not require that any school district desegregating under a legal requirement actually receive assistance, nor does it in any way restrict or remove the authority of the Secretary to deny assistance to a school district for reasons other than its location or the source of the legal requirement. The Secretary would have both the authority and the responsibility to deny funds under this appropriation to any district because its plan does not at least eliminate racial discrimination as required under the Constitution or Federal statute. This amendment would merely require that that district be denied assistance under relevant criteria concerning the merits of its proposal, rather than irrelevant criteria such as the source of that legal requirement or the location of the district.

Mr. STENNIS. Would be eligible or ineligible?

Mr. MONDALE. Would be eligible.

Mr. STENNIS. So paragraph (c) is to make this have a nationwide application?

Mr. MONDALE. That is right.

Mr. STENNIS. I really did not understand it that way. As I told the Senator the other night, on my motion, the Appropriations Committee struck out the language in the report that limited it to the South. I will support the Senator in the idea of making this bill nationwide. I did not really realize that (c) had that purpose. Perhaps the Senator could rewrite it or rephrase it in some way, or I could drop (c) from my amendment.

I yield the floor now to the Senator from Minnesota.

Mr. MONDALE. Mr. President, I would like to commend the Senator from New York for introducing amendment No. 737 which seeks to add to the education appropriations bill $150 million to assist school desegregation efforts this summer and throughout the next school year. I am pleased that in introducing this amendment, Senator Javits has included the three amendments to the emergency school desegregation assistance program that I introduced recently on behalf of myself, and 20 of my colleagues.

These amendments which now appear as sections (a), (b), and (c) in the Javits amendment are designed to help insure that the funds under this appropriation are not used to subsidize private segregated academies, and that they are equally available to school districts throughout this Nation that are desegregating under legal requirement. They have the endorsement of the administration, the National Education Association, and the Leadership Conference on Civil Rights.

Section (a) of this amendment prohibits the funding of school districts which engage or have unconstitutionally engaged in the transfer of property or services to private segregated academies. It is identical to my revised amendment to the supplemental appropriations bill that was adopted by the Senate on Monday night by a 63–19 vote.

The need for this amendment has been documented by many witnesses before the Select Committee on Equal Educational Opportunity. Just yesterday, for example, a panel of attorneys associated with the NAACP legal defense fund described numerous examples in which public schools have given, leased, or sold school buildings, textbooks, schoolbuses, and school equipment to segregated private academies that have been established to circumvent school desegregation efforts. One of these witnesses, Mr. Melvin Leventhal of Jackson, Miss., estimated that "between 15 and 20 percent of the school districts of Mississippi that have been required to integrate have transferred property to private schools."

Section (b) of this amendment, which would prohibit funds under this appropriation from supplanting local or state funds, is equally essential. The same attorneys also testified about the way in which school districts have attempted to reduce the public support for the public schools so that more funds would be available to assist these private academies.

Section C of the amendment simply requires that no school district legally required to desegregate shall be denied eligibility under this appropriation on the basis of its location or the source of the legal requirement.

I will support Senator JAVITS' amendment because it includes these safeguard provisions. I hope that they, coupled with the administration's commitment to prevent abuses, can help assure that funds under this appropriation are granted only to those districts that are making an honest effort to desegregate.

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I sincerely hope that they will help prevent a Federal subsidy of paper compliance.

These three amendments do three simple things:

Part (a) of the first amendment prohibits money under this appropriation to go to school districts which have unconstitutionally diverted or which are diverting public property from those districts into private schools for the purpose of discrimination.

Part (b) prohibits the use of this money in school districts which are using it to substitute for money that would otherwise be spent. It would assure that this money would be used to supplement, not supplant. It would prohibit funds under this appropriation from being granted to districts which have reduced their financial support for public schools as a result of desegregation.

Part (c) makes it a national bill, not restricted specifically to the 17 States of the Deep South and border States, however they are defined by the administration.

On the first point, the diversion of property from public schools is not a technicality, it is a fundamental point. In many areas desegregation is evaded by the establishment of private segregated academies. Many of these communities have difficulty supporting those private segregated academies from voluntarily contributed funds. The way they are able to support these private schools is by obtaining, free or at reduced prices, school buildings, textbooks, desks, teaching equipment, laboratory equipment, bus transportation, and even staff from public schools.

There is no doubt in my mind whatsoever that such efforts are clearly and unquestionably unconstitutional. If there is any question at all about the existence of these practices, may I refer to the testimony by the National Education Association of circumstances in which a 10-year-old school building, with 10 classrooms, located on 2 acres of land—a brick building—was sold to a private segregated academy for $1,500. This has happened in other school districts.

The other day we had testimony by attorneys bringing civil rights suits in the South. They testified very clearly that district after district had pursued this policy of transferring public property to private segregated academies for the purpose of giving public support for an unconstitutional purpose. One attorney said:

"The transfer of textbooks is often made at the expense of students remaining in the public schools."

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. MONDALE. In just a moment.

I continue to read:

"We are not talking about just the transfer of surplus books, books that are not going to be used as old textbooks. If certain parish schools are integrated in early February of this year.

"School children showed up and found that their textbooks which they had were last year's textbooks. They were old textbooks they had not even been used in the previous semesters.

"The new education editions had gone to private schools. Students both black and white in the public schools found themselves sitting at desks which were far too small for them.

"The question arose where are the desks we had last semester? The answer was they were declared surplus and were sent or sold to private schools.

"The public school buses in this and every other parish I know of pick up students that go to the private schools at houses and transfer them to the public schools. They provide the best possible service for those students going to private schools."

This testimony, which I shall not repeat, goes on for pages and shows that throughout the areas in which the courts are ordering the end of discrimination, a standard practice is to set up private academies and to substantially fund them by the unconstitutional transfer of public property.

I am glad to yield to the Senator from North Carolina.

Mr. ERVIN. And the amendment does not do anything to deprive the private academies of anything, but it would deny the benefit of the funds to the children who are denied admission to the private academies.

Mr. MONDALE. Well, it discourages a practice——

Mr. ERVIN. Well, is that not a fact?

Mr. MONDALE. No, I think the characterization the Senator makes is not a fact. I think it is the other way around. Not to discourage this practice is to destroy the possibilities of a decent integrated public school system in those districts.

Mr. ERVIN. Let me ask the Senator one or two other questions.

Are not these funds appropriated for the ultimate benefit of the schoolchildren, black and white, in the public schools?

Mr. MONDALE. Yes.

Mr. ERVIN. But this amendment would deny the benefit of the funds to the black and white children who will remain in the public schools, and who may be denied admission to the private academies or be incapable financially of attending the private academies. It would deny them the benefit of these funds, not on account of any sins on their part, but on account of the sins of others.

Mr. MONDALE. May I say to the Senator from North Carolina that if this practice is permitted, the public school children are going to be the losers, because thousands and thousands of dollars worth of public property that had been purchased for their education is being given away and sent to another school. The NEA testified that in one school district, an estimated $55,000 worth of textbooks disappeared one day in the public school, and the next day ended up in the so-called private segregated academies. Does that help those black and white children?

Mr. ERVIN. The bill does this. According to its proponents, the private academies have taken schoolbooks away from them, and the amendment of the Senator from New York would take the money appropriated by this bill away from them also. So the children would be the victims coming and going.

Mr. MONDALE. There is another part of this I would like to mention. Perhaps I can do it best by quoting this attorney. He said:

"The attitude in this district is that the private schools get the best transportation, they get the best textbooks. It seems as if, in many school districts that the aid to public schools is being used in a situation to drive students out of the public schools into the private schools."

In other words, the extent of such transfers is such that the bone has been picked so bare that the few white students who have stayed back there are encouraged to go to the private segregated academies.

Mr. ERVIN. And then the amendment proceeds to take the bone away from the children.

Mr. MONDALE. I would not characterize it that way. The provision earlier to $150 million to be obligated between now and September 30. HEW has said the money will be concentrated—some districts will get no money in any event. Surely where money is to be obligated so quickly, and where there is not enough money for all, those districts which have shown open contempt for constitutional requirements in this manner should be excluded.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. MONDALE. I yield.

Mr. MAGNUSON. I wonder if the Senator, who is chairman of the special committee on this subject—and the Senator from Washington is one of the members, though he has not been too diligent in his attendance, mainly because of this situation—does the Senator know of any reason why the President of the United States waited until May 25 to send this measure up?

Mr. MONDALE. I must say that——

Mr. MAGNUSON. I know that the Senator is probably not any more privy to what goes on down there than I am. But I was wondering if they notified the committee which was set up to look at these things.

All of a sudden, this measure comes up, after we had held hearings on the education appropriations and marked up the bill, telling everybody in the country, "We are going to get this done early and quickly." All of a sudden, here comes another proposal with which I do not disagree, but I do not know why they did not go through the legislative process with this.

Mr. MONDALE. Permit me to say——

Mr. MAGNUSON. Here we are with an appropriation bill, and a good one, and we have had it how long now? Five weeks, and last year everybody criticized everybody else and pointing a finger because it was not completed early.

Now all of a sudden somebody wakes up downtown, and says, "Here is another education proposal."

Now, I agree with what they are trying to do here, I personally agree with it, but I wonder if we are ever going to get an education appropriation bill through this Congress. If we go over till next week, there will be another proposal coming up from somebody, I do not know who.

We have been trying to get this bill enacted, and they came to us after all the hearings are complete. I want to make this history. They came to us very late in the game. I got a call one day from then Secretary Finch, who wanted to see me and Mr. Cotton. We had the bill marked up already, and they came in and wanted our advice as to how to proceed on this proposal.

Well, Senator Cotton and I said, almost without even looking at one another, "Please don't put it on our educational bill, because we are trying to get the appropriation passed early. When a supplemental comes along, you can word it so that it will be germane."

I suppose this wording would be germane: I do not know.

I agree with the Senator. These are programs I agree with, and I would not vote to strike it out. But I am making a plea in this whole field of education, for some kind of orderly procedure. We will never get an appropriation if this keeps up.

Mr. MONDALE. Permit me to say that——

Mr. MAGNUSON. I think the action I will remember most about this took place recently, I do not know how long ago it was, but we spent 4½ days on this floor, debating an authorization bill for education; $24 billion in new and extended authorizations. And for 4½ days there was not one single voice raised or mention made about the money that was going to be appropriated to meet that authorization and to educate the kids.

Here we are, all over again with the same type of thing. This is pretty good language, as far as I am concerned. But we were not apprised of this when we had that meeting. Mr. Finch did not show up for the meeting. I think because he was in the hospital at that time.

They did ask our advice, and we said, "Put it on a supplemental bill; we have completed action on existing authorization. We are marking it up, trying to get it along the way."

So all the school districts, including Madden—I do not know where Madden is. Is that in Mississippi?

Mr. STENNIS. Yes.

Mr. MAGNUSON. All right. So all the school districts in the United States, some 24,000 or 25,000 of them, could know how they could effectively plan for the next year under the rules of the game that now exist, and they were very happy about it. They even suggested that we not put in the $1 billion advance funding. They said they would rather have an early bill, and get it over with under the present rules.

So here we are. I just do not understand why this happened, and why somebody—as someone told me today, they must just have wakened up downtown.

The Senator and his committee have been pursuing this matter, and the testimony has been impressive. I approve of it. But I do not know why the Senator from New Hampshire and I—maybe we are unlucky or something, I do not know—we work hard, we hold extensive hearings, hundreds of witnesses appear, and we get what I feel is a good bill. We are going to pass it early this year and we are going to do our job, and exercise our responsibility to the over 52,000,000 schoolchildren of the United States, but we get it all signed and sealed and ready for the Senate floor—where we get a few amendments to increase some of the funding levels—but then we always end up with this same thing where something new is proposed.

Mr. COTTON. May I say that the Senator, in his report, is adhering strictly to the facts, and I will vouch for every word he says.

Mr. MAGNUSON. I am not criticizing anyone about this, but I am making a little plea to get this measure over with under the rules, so that the thousands of school districts, colleges and universities, in the United States, South, East, North, and West, can know what they might expect to get next year, and make their plans to educate the 52 million students of America. This is all I am trying to say.

Mr. MANSFIELD. Mr. President, will the Senator yield to me?

Mr. MAGNUSON. I do not have the floor. The Senator from Minnesota yielded to me for a question, and I made a speech. [Laughter.]

Mr. BYRD of West Virginia. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. MONDALE. Mr. President, I am happy to yield to the Senator from Montana.

Mr. MANSFIELD. Mr. President, if the Senator will permit me, I would like to propound a unanimous-consent request, which I hope will be acceded to; and, just as the Senator from Washington made a plea, I am making a plea.

I ask unanimous consent that there be a time limitation of 20 minutes on the Stennis amendment and 20 minutes on the Javits amendment, the time to be equally divided between the sponsors of the amendment and the manager of the bill, or whomever he may designate.

The PRESIDING OFFICER (Mr. Long). Without objection agreed to.

Mr. ERVIN. Mr. President, I object. If they vote on the Javits amendment, my amendments are perfecting amendments to the Javits amendment. I have no

objection to the 20 minutes on the Stennis amendment, but I object to anything that would cut off the time on my amendments.

The PRESIDING OFFICER. Does the majority leader limit his request to the first amendment?

Mr. MANSFIELD. I think so, but I am just waiting to see what will happen. Just the first amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MONDALE. Mr. President, I should like to respond to what I thought were the most appropriate remarks of the Senator from Washington.

I think the difficulty we are having here, in part, is that this legislation should have first been sent up in the form of authorizing legislation.

Mr. KENNEDY. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

The time is now under the control of the Senator from New York (Mr. Javits) and the Senator from Mississippi (Mr. Stennis). Who yields time?

Mr. JAVITS. I yield 3 minutes to the Senator from Minnesota.

Mr. MONDALE. I say to the Senator from Washington that I have used only 5 minutes of the debate time tonight for myself.

I think this is old ground. We have been over it before. Everybody knows what is involved in the proviso. It is legislation we adopted the other night, when the key portion was passed overwhelmingly. It is supported by the National Education Association, the Leadership Conference on Civil Rights, and by this Administration. It is the bare minimum that can be included in this measure to help assure that the money goes for the purpose that is stated.

I hope very much that the Stennis amendment will be rejected and that the Javits proposal, as it stands, will be adopted by the Senate tonight.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. I yield 5 minutes to the Senator from Alabama.

Mr. ALLEN. I thank the distinguished Senator from Mississippi. Mr. President, I support the Stennis amendment, which, starting on line 7 of page 2 of the printed amendment, would eliminate the three subsections starting with the words "provided further" and continuing down through the reminder of the amendment. It would eliminate subsections (a), (b), and (c).

These subsections are limitations on the Department of Education. They provide limitations on the expenditure of funds appropriated by this act. In effect, they follow the same theory as the Whitten amendments, which were limitations on the power of the Department of Education to spend funds; and the Senate, in its wisdom, turned down the Whitten amendments, seeking to put limitations on the powers of the department. These three subsections seek to place limitations on the power of the department to spend funds.

So, if it was improper to limit the power of the department under the Whitten amendments, then, under the provisions of the Javits amendment, it is just as improper to limit the power of the department to expend funds. So that it seems to the junior Senator from Alabama that if we adopt the Stennis amendment, we still leave the Department of Education with full power and authority to apply the same limitations that are now provided in the Javits amendment. No power whatsoever is taken away from the department by the Stennis amendment. They will still have carte blanche to do anything they want that is now permitted by law with the funds appropriated by this bill.

So, in speaking for the Stennis amendment, we speak for giving the department a free hand in the expenditure of the funds and not putting limitations on them, just as the Senate refused to put limitations on the department as was proposed under the Whitten amendments.

So, Mr. President, it occurs to me that with the Stennis amendment we will have a better bill, we will not have the department hamstrung, and we will not have the department limited in its course of action by these three provisions, which can cause much confusion, much uncertainty, and much difficulty.

With the adoption of the Stennis amendment, the junior Senator from Alabama would be willing to support the Javits amendment. If the Stennis amendment is rejected, then he will vote against the Javits amendment.

Mr. JAVITS. Mr. President, I yield 2 minutes to the Senator from Rhode Island.

Mr. PELL. Mr. President, the authorizing committee did not consider this measure, as has been pointed out by the senior Senator from Washington. However we are considering S. 3883 which provides for a substantially larger amount of money for this purpose. Because of the so-called emergency nature of this appropriation, tyring to get funds to those schools which in good faith are meeting problems resulting from integration with the coming school year, we thought it

advisable to accede to this unorthodox procedure of having the matter handled directly by the Appropriations Committee. We therefore raise no objection to the procedure, but we are shocked at the fact that virtually no guidelines were offered by the Department of Health, Education, and Welfare for the spending of this money in the—supplemental appropriations hearing and that it was really to be given to them carte blanche.

We felt that there should be some criteria for distribution of these funds, and for that reason the amendments that the Senator from Minnesota (Mr. Mondale) drew up seemed to us to supply what was needed, especially in view of the fact that there has been no specific authorization legislation.

For this reason, even though we have not had a chance to fully consider the major bill in the authorizing committee, we support the Javits amendment. I suppose my position would be, that if these tightening criteria are not adopted—meaning that there would be no guidelines—then I think we in the authorizing committee would be hard put to support the $150 million, although I would not make a commitment of that sort at this time.

The PRESIDING OFFICER. Who yields time?

Mr. JAVITS. Does the Senator from Mississippi desire to yield back the time?

Mr. ALLEN. Mr. President, will the Senator from Mississippi yield me 1 additional minute?

Mr. STENNIS. I yield 2 minutes to the distinguished Senator from Alabama.

Mr. ALLEN. Mr. President, I offer at this time, for inclusion in the RECORD, pages 22 and 23 of report No. 917 of the Appropriations Committee on the second supplemental appropriation bill. I read briefly from the report:

"Under no circumstance are any of the funds intended to be available to overcome racial isolation or racial imbalance.

"As indicated above, the intent of the appropriation is to provide a broad range of financial and technical assistance, but the character and degree of assistance required shall, in every instance, be a matter of local initiative and determination.

"Further, the committee believes strongly that these funds must not be used to finance directly or to encourage massive or excessive busing of students. Any transportation of students covered by this appropriation must be a part of either the court order or the approved desegregation plan."

From another paragraph:

"First, consistent with recommendations of the administration, the funds shall be available, on a project grant basis, to assist any public school district under either a court order or with an approved plan to desegregate beginning with the school term that begins in the fall of 1970."

* * * * * * *

Mr. ALLEN. So this money would be on a project grant basis.

If the proposed project did not meet with the approval of the Department, then there would be no requirement that the grant be approved, making the necessity for these three subsections that the Stennis amendment seeks to strike absolutely unnecessary.

Mr. JAVITS. Mr. President, I yield myself 2 minutes, only because there may be other speakers.

The PRESIDING OFFICER (Mr. Long). The Senator from New York is recognized for 2 minutes.

Mr. JAVITS. Mr. President, as this amendment was worked out by the administration, it included these particular provisos, and it was worked out further in the course of Senate debate and by voting. Therefore, the fact that the amendment states what it does as a unit is as it was presented by the administration. That is what I have presented to the Senate. I hope that it will be cleared, and that there is no dearth of structure for the utilization of the money.

I mentioned again, and refer now to the fact that on page 741 of the hearings, on the supplemental appropriation bill, the administration presented its basic policies as to the $150 million, specifying in great detail what it will do with the money. I invite the attention of Senators to pages 741 to 763—about 20 pages odd, and even a list of the officials who will handle the business—100 people required, and their salaries, so that I do not think there is any dearth of implementation.

The reason for the provisos is that the evidence taken by the Select Committee on Equal Educational Opportunity, the special committee headed by the Senator from Minnesota (Mr. Mondale), of which the Senator from Rhode Island (Mr. Pell) and I are both members, bears out the fact for the need for the provisos, that we would not wish to do this with this money and, therefore, we have a right to tell the HEW that we do not wish that. That is a proper limitation upon the expenditure of funds. They are matters we do not wish to leave up to the HEW.

The Senator from Alabama (Mr. Allen) is quite right that HEW could, if they chose, do this themselves. These are matters, if the Senate desires it, that we do not wish to leave to the HEW. We will decide them. That is why those limitations are there. That is why the point of order was overruled. I respectfully submit that I have presented to the Senate what I consider to be the administration's amendment complete in itself. Whatever arrangements or compromises we have made is our problem. Everyone does that when we consider pieces of legislation. I hope it will be, in toto, sustained.

Mr. ALLEN. Mr. President, will the Senator from New York yield for a question?

Mr. JAVITS. I yield.

Mr. ALLEN. The Senator does not feel that HEW has run at all behind the wishes and actions of Congress in the matter of forcing desegregation in the public schools in the South, does he?

Mr. JAVITS. I am sorry, I did not hear the Senator.

Mr. ALLEN. The Senator from New York does not feel that the Department of HEW has been behind the thinking or actions—that they have run behind the thinking of Congress in the matter of desegregating the public schools in the South? Would it not be advisable to leave the power of fund allocation to the HEW? Is it not just as anxious to desegregate the schools as is Congress?

Mr. JAVITS. I do not think it is a question of intent. Many people complain about some of the things they have done, that they are taking deferments in respect to such plans, and others think that they have been diligent in litigation. Attorney General Mitchell went down into the South himself. I would not want to characterize it or characterize the dual economy.

The PRESIDING OFFICER (Mr. Bennett). The time of the Senator from New York has expired.

Mr. JAVITS. Mr. President, I ask unanimous consent to proceed for 30 additional seconds.

The PRESIDING OFFICER. The Senator from New York is recognized for 30 seconds.

Mr. JAVITS. Mr. President, all I say is that this is presented as a unit. I worked it out with the administration.

Mr. MONDALE. Mr. President, I should like to ask a question of the Senator from Mississippi, but first I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. MONDALE. Mr. President, I want to make one point. It is not difficult to understand why the administration wants these three provisions which are sought to be stricken here. They will strengthen HEW in its effort to make the program work for the purposes which I think all of us share.

Mr. STENNIS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. Bennett). The Senator from Mississippi has 5 minutes remaining, and the Senator from New York 1 minute remaining.

Mr. STENNIS. Mr. President, if I may have the attention of the membership. With all deference to everyone, it has been shown here that there is no direct authorization for the purpose that this money is going to be used for.

This is a hodgepodge authorization picked up here, there, and yonder, going back as early as the 83d Congress to find some old, unused authorizations. There has never been any bill presented to any committee of the Senate with testimony on it. There has been a little testimony taken down here with reference to the subject matter but no bill and no report on the bill as such. This whole Javits amendment is an amendment, that my immediate amendment seeks to strike out the provisos here. The first one was the one which was to help the downtrodden schools that do not have enough equipment to carry out or hasten desegregation or going for a host of other things that supposedly they do not have down there, and then we turn right around and put a penalty here. There is some little school, only one, which has been named—a small one down in Mississippi—it sold a little school building for a nominal sum for a public school purpose, as alleged.

The whole county school board has jurisdiction of all the schools in that county. It is the local governing authority. Under the harsh terms of this amendment, that county entirely, or any other county like-situated in the South, would be cut off from all this money by a mandate on a bill, as I have said, that has not had a respectable course through this Chamber and in the committees, with the filing of a report and explanation of what it can mean.

Thus, I submit, we should strike out these provisos, these limitations, these penalties, these restrictions which apply retroactively. It might be that they could be applied in the future but this language goes back and penalizes them and

knocks them out because of something that happened in the past, with only one instance proven here on this floor before a committee.

I just submit to the fairness of the thing and in the spirit of the whole bill itself, that these provisos go off at 180 degrees the other way. In keeping with the spirit of the bill itself, they should be stricken out. I hope, and I believe that they will.

Mr. MONDALE. Mr. President, we are not dealing with just detail. What we are dealing with is the transfer of public property to private segregated academies, which is the major strategy now being used to circumvent the orders of the Supreme Court requiring desegregation. If public property, as is now the case, continues to be diverted into private segregated academies, then the hope for a successful end to discrimination and segregation will have largely escaped us.

In one State it is estimated that since September 1969, a significant date because that is the date by which the Supreme Court ordered complete desegregation, the number of white privately segregated schools increased from 35 to 100.

Mr. President, I think if we cannot stop public school systems from subsidizing segregation academies, at the very least we should not reward them with public funds for doing so.

* * * * * * *

Mr. STENNIS. Mr. President, I have about concluded my remarks. I think that we have made this matter clear.

All we are passing on is the three limitations or restrictions. And we can pass them to any other matter, after the vote on Javits amendment. It does not reduce the money or anything of that kind.

I respectfully submit that a case has not been made out there. Because of one little school building, they propose to put a penalty on the entire county. That county has about 20,000 to 25,000 people living in it. I understand that the population is about 50-50 divided, colored and white.

If Senators want to penalize them and anyone else that might get caught in this mess for a small item like that, why they should vote no, vote against my amendment.

If Senators want to strike that feature out of the bill—and I assume these would apply prospectively anyway—vote "Aye".

The PRESIDING OFFICER (Mr. Bennett). All time having expired, the question is on agreeing to the Stennis motion to strike. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

* * * * * * *

The result was announced—yeas 28, nays 59, as follows:

[No. 173 Leg.]

Yeas—28

Allen	Eastland	Holland	Spong
Bennett	Ellender	Hollings	Stennis
Bible	Ervin	Hruska	Talmadge
Byrd, Va.	Fannin	Jordan, N.C.	Thurmond
Cannon	Fulbright	Long	Tower
Cotton	Gurney	McClellan	Williams, Del.
Curtis	Hansen	Sparkman	Young, N. Dak.

Nays—59

Aiken	Dominick	Kennedy	Pearson
Allott	Eagleton	Magnuson	Pell
Anderson	Fong	Mathias	Percy
Baker	Goodell	McGee	Prouty
Bellmon	Gore	McGovern	Proxmire
Boggs	Gravel	McIntyre	Randolph
Brooke	Griffin	Metcalf	Ribicoff
Burdick	Harris	Miller	Schweiker
Byrd, W. Va.	Hart	Mondale	Scott
Case	Hatfield	Montoya	Smith, Maine
Church	Hughes	Moss	Stevens
Cook	Inouye	Muskie	Symington
Cooper	Jackson	Nelson	Tydings
Cranston	Javits	Packwood	Young, Ohio
Dole	Jordan, Idaho	Pastore	

Present and giving a live pair, as previously recorded—1

Mansfield, against.

Not voting—12

Bayh	Hartke	Murphy	Smith, Ill.
Dodd	McCarthy	Russell	Williams, N.J.
Goldwater	Mundt	Saxbe	Yarborough

So Mr. Stennis' motion to strike from Mr. Javits' amendment (No. 737) the language beginning with the proviso on line 7, page 2, through line 19, page 2, was rejected.

OPENING STATEMENT ON "EMERGENCY SCHOOL ASSISTANCE" BEFORE THE SENATE COMMITTEE ON APPROPRIATIONS, SUBCOMMITTEE ON SUPPLEMENTALS AND DEFICIENCIES, MAY 27, 1970

Mr. Chairman, in his statement of March 24 on school desegregation, the President said that he would recommend expenditure of an additional $1.5 billion over the next two years to assist local school authorities in their efforts to desegregate. The President is now implementing this commitment with two proposals to the Congress:

1. First, he is asking for a special appropriation, under existing authorities, to provide emergency assistance to those school districts that are now in the process of desegregating—or have recently desegregated—particularly those school districts that will be desegregating for the first time at the beginning of the 1970 fall term. It is in support of this item that we are appearing here today,

2. Second, the President is proposing enactment of the Emergency School Aid Act of 1970 which would authorize a broad range of support for school districts working toward the elimination of both de jure and de facto segregation. The details of this legislative proposal were forwarded to the Congress by the President last Thursday, May 21.

This Administration intends to do everything possible to assist school districts in their efforts to bring an end to school segregation. We do not believe that enough has been done to overcome the very real and difficult problems that are encountered by schools, students, teachers, parents, and the community at large once a goal or deadline has been set for desegregation. Up until now, our laws, our courts and the Federal government have said to school districts: "Desegregate; do it now; do it by September," and then left the school, its teachers, and residents of the community to face the problem unassisted. All too often, we have failed to recognize what the problems were. All too often, we have been critical of their lack of progress without recognizing that in many instances the community and the school districts could do a better job if we were to give them a helping hand—if we were to demonstrate with something more than words our desire to bring about desegregation promptly and with minimum disruption and turmoil.

Both the President's legislative proposal and the request for emergency appropriations are designed to provide the kind of assistance that we believe to be so important for these school districts.

We are requesting a new and special appropriation, "Emergency School Assistance," that would provide financial and technical assistance to the 1,000 school districts that are expected to desegregate for the first time at the beginning of the fall 1970 term—or have recently begun the process. These districts include more than 10,000 individual schools serving over 7 million students. The appropriation we are requesting represents a significant amount of money—$150 million. This money would be administered by the Office of Education in the Department of Health, Education, and Welfare. Except for a limited portion needed to finance administrative costs associated with the program, the funds would be granted principally to individual school districts committed to carrying out the basic process of desegregation. However, these funds could also be granted to public and private community and civic organizations where it is found that such organizations can more effectively carry out programs designed to support the implementation of a desegregation plan.

Frankly, time is running out on us. We are now left with little over three months to work on the many, many problems that these school districts will face as they work toward desegregation. Our objective is to provide these school districts and others who would work with them both financial and technical assistance between now and next fall.

The problems facing these school districts vary among school districts. In many instances, if desegregation is going to result in equal educational opportunity, there is a need to immediately upgrade the quality of the curriculum and of the teaching program of given schools. Equality of opportunity in many cases requires remedial training for the students who have heretofore gone to a sub-

standard school. Many need additional teachers, both on a temporary and permanent basis. They face increased administrative burdens and tremendous problems of parent-teacher and community relations. They also need to modify existing school buildings to accommodate children of different age and grade groupings or to accommodate a larger number of pupils. They lack the funds to acquire a classroom trailer or other mobile facilities which might serve as a temporary expedient.

There is also a need to work imaginatively with the parents and with members of the community to pave the way for an orderly process. We are very hopeful that by offering financial assistance we can encourage local civic and public spirited groups to assist in the task of preparing the community to adjust positively to a desegregated school system.

Based on our experience thus far with the title IV program of the Civil Rights Act of 1964, we know that a great deal can be achieved by passing experience gained by those who have already gone through the process to the school districts facing this experience for the first time. This by no means exhausts the full range of problems or solutions. The justification materials which we have already furnished to you present the full range of the program that we propose to carry out with this appropriation.

HOW THIS EMERGENCY PROGRAM WOULD WORK

As I have already said, the Commissioner of Education would be given the basic job of administering the program. He would do this by making grants to school districts or in special circumstances to responsible non-profit groups at the local level. These grants would be used to finance temporary teachers, teacher aides, additional administrative and clerical staff at the local level, counseling staff, teacher training, curriculum development, special reading programs, including remedial programs for the students themselves, remodeling of facilities, support for planning the logistics of desegregation, community action and community relations efforts, and, finally, technical assistance—assistance that would be furnished by experienced people from the State and local level.

We are requesting funds under six authorities—five vested in the Commissioner of Education and one under the Economic Opportunity Act. We believe that this special effort has the best chance of working if we award the grants under any or all of the six authorities under which the funds are being requested.

While on the subject of the various authorities under which the program would be conducted, I would like to state the importance of relying, as this program proposes to do, heavily on the program authority granted under title II of the Economic Opportunity Act. It is under this authority that we would provide assistance to remodel facilities. It is under this authority that we would provide financial assistance for the procurement of additional manpower and direct services to schools. The several authorities already vested in the Office of Education, notably authorities under the Education Professions Development Act and title IV of the Civil Rights Act, would serve as the basis for assistance for teacher training, curriculum development, and technical assistance. I want to emphasize, Mr. Chairman, that we do not propose, nor would we be authorized under this request, to finance any new construction of a school building or other facility.

Finally, Mr. Chairman, I would like to say a word about the need for administrative staff to help carry out this program. We would begin immediately to divert existing staff from the Office of Education for the operation of this program. Once we have put it in place, we would also rely on this staff to implement the President's new legislative proposal—the Emergency School Aid Act of 1970. Because we will be taking these people from other important jobs within the Office of Education, it will be necessary to replace them, and a limited share of this request—$2.1 million—is proposed to finance administrative expenses in the Office of Education.

Except for the Salaries and Expenses portion of the request, the grant funds that make up the bulk of the request would be available for obligation through September 30, 1970. We have asked for this much time in order to give the school districts maximum opportunity to organize their proposals and to get their operations underway. I should make clear, however, that the effort that would be financed through these grants will not be entirely completed by that time. Our objective is to have the awards made by that time, but they would cover local programs throughout the school year.

We see this special emergency 1970 appropriation as serving this one-time need. The resources proposed for the remainder of 1971 and 1972 in the President's March 24 message will be requested as part of the regular budget process following Congressional action on the legislative proposal.

That summarizes our request. We will be glad to answer any questions that the Committee might wish to ask.

Justifications of Supplemental Appropriation Estimates for Committee on Appropriations

Emergency School Assistance for 1970

U.S. DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE

(215)

Appropriation Estimate

EMERGENCY SCHOOL ASSISTANCE

For providing emergency assistance to desegregating school districts under part D of the Education Professions Development Act (title V of the Higher Education Act of 1965), the Cooperative Research Act, title IV of the Civil Rights Act of 1964, section 807 of the Elementary and Secondary Education Act of 1965, section 402 of the Elementary and Secondary Education Amendments of 1967, and title II of the Economic Opportunity Act of 1964, as amended, including necessary administrative expenses therefor, $150,000,000 to remain available until September 30, 1970: Provided, That funds appropriated to carry out programs under title II of the Economic Opportunity Act of 1964 shall not be subject to those provisions of the Economic Opportunity Amendments of 1967 and 1969 that set mandatory funding levels: Provided further, That funds appropriated for administrative expenses shall remain available until June 30, 1971."

Explanation of Language Change

The proposed language is necessary to establish the new appropriation "Emergency School Assistance." The proposed language authorizes funds to support the emergency needs of the 994 school districts which are in the process of desegregation.

Office of Education

Emergency School Assistance

Amounts Available for Obligation

	1970 Presently Available	1970 Revised Estimate	Increase
Appropriation.....	---	$150,000,000	$150,000,000

Obligations by Activity

	1970 Presently Available Pos.	Amount	Revised Estimate Pos.	Amount	Increase Pos.	Amount
1. Special educational personnel and programs.....	---	---	---	$115,000,000	---	$+115,000,000
2. Community participation programs...	---	---	---	15,000,000	---	+ 15,000,000
3. Equipment and minor remodeling.....	---	---	---	17,900,000	---	+ 17,900,000
4. Federal administration and technical assistance.....	---	---	100	2,100,000	+100	+ 2,100,000
Total obligations.	---	---	100	150,000,000	+100	+150,000,000

Office of Education

Emergency School Assistance

Obligations by Object

	Presently Available	Revised Estimate	Increase
Total number of permanent positions...	---	100	100
Full-time equivalent of all other positions.....	---	12	12
Average number of all employees.....	---	97	97
Personnel compensation:			
Permanent positions.....	---	$1,200,000	$1,200,000
Positions other than permanent.....	---	100,000	100,000
Other personnel compensation.....	---	---	---
Subtotal, personnel compensation.	---	1,300,000	1,300,000
Personnel benefits.....	---	97,000	97,000
Travel and transportation of persons..	---	313,000	313,000
Rent, communications and utilities....	---	207,000	207,000
Printing and reproduction.....	---	42,000	42,000
Other services.....	---	77,000	77,000
Supplies and materials.....	---	14,000	14,000
Equipment.....	---	50,000	50,000
Grants, subsidies and contributions...	---	147,900,000	147,900,000
Total.....	---	150,000,000	150,000,000

Summary of Changes

1970 enacted appropriation	---
1970 revised estimated obligations	$150,000,000
Total changes	+150,000,000

Increases

Program:	
Special educational personnel and programs	$115,000,000
Community participation programs	15,000,000
Equipment and minor remodeling	17,900,000
Federal administration and technical assistance	2,100,000

Explanation of Changes

The President, in his meassage of May 21, 1970, to the Congress of the United States, proposed the Emergency School Aid Act of 1970. Under the terms of this Act, funds would be used to assist local school authorities in meeting special needs incident to both de jure and de facto segregation.

The $150,000,000 requested in this supplemental appropriation, to be used under existing authorities, will provide immediate assistance to the approximately 994 de jure school districts in the 17 southern and border States which have recently developed or which must develop total desegregation plans by September 1970.

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Emergency School Assistance

Introduction

On March 24, 1970, the President of the United States issued a statement entitled "School Desegregation: A Free and Open Society". In clearly establishing the policies of his Administration in the areas of school desegregation and in restating his firm dedication to equal educational opportunity, the President added the following commitment.

> "Words often ring empty without deeds. In government, words can ring even emptier without dollars.
>
> In order to give substance to these commitments, I shall ask Congress to divert $500 million from my previous budget requests for other domestic programs for fiscal year 1971, to be put instead into programs for improving education in racially impacted areas, North and South, and for assisting school districts in meeting special problems incident to court-ordered desegregation. For fiscal year 1972, I have ordered that $1 billion be budgeted for the same purposes."

In this same message, the President directed a cabinet-level committee chaired by the Vice President of the United States to develop plans for the effective use of such funds as may be appropriated by Congress in response to his recommendation. One outcome of the efforts of this committee and of the Department of Health, Education, and Welfare, has been a bill requesting Congress for an authorization totaling $1,500,000,000 over fiscal years 1971 and 1972. It was realized, however, that final action on these proposals could not be completed in time to deal with the most pressing problems of school districts which have been desegregating this year or are faced with desegregation in September 1970. These districts have much work to do and many preparations to make this summer and are in need of financial assistance. To meet the emergency needs of such school districts, the President has proposed that Congress appropriate $150 million under six existing legislative authorities to be made available immediately to school districts undergoing desegregation.

Dimensions of the problem

In the 17 southern and border States there are some 4,500 school districts, of which 994 are in the process of desegregation. These include some 220 school districts now under court order calling for complete desegregation by this September, 496 districts, which have submitted, are negotiating or are likely to be negotiating desegregation plans under the Department of Health, Education, and Welfare auspices for total desegregation by September; another 278 districts which will be operating under total desegregation plans implemented in 1968 and 1969.

Selection of appropriate authorities

In recognition of the immediate financial needs which desegregation places upon these 994 school districts, the $150 million being proposed for immediate financial aid is requested under six existing legislative authorities which are:

1. Community development programs:

Economic Opportunity Act of 1964, Title II, Urban and Rural Community Action Programs. This title's purpose is to help focus available local, State, private, and Federal resources upon the goal of enabling low-income families, and low-income individuals of all ages, in rural and urban areas, to attain the skills, knowledge, and motivations and secure the opportunities needed for them to become fully self-sufficient. Presently funded under this authority are Headstart and Follow Through, among others.

2. Personnel development programs:

Education Professions Development Act, Part D, Improving Training Opportunities for Personnel Serving in Programs of Education Other Than Higher Education. Programs or projects under this part are funded to improve the qualifications of persons serving or preparing to serve in educational programs in elementary and secondary schools (including preschool and adult and vocational education programs) or postsecondary vocational schools or to supervise or train persons so serving.

3. Major demonstrations:

Cooperative Research Act. This Act authorizes projects for research, surveys, and demonstrations in the field of education, and for the dissemination of information derived from educational research.

4. Dropout prevention:

Elementary and Secondary Education Act, Section 807. This section authorizes demonstration projects involving the use of innovative methods, systems, materials, or programs which show promise of reducing the number of children who do not complete their education in elementary and secondary schools.

5. Technical assistance:

Civil Rights Act of 1964, Title IV. This title authorizes rendering technical assistance to school boards in the preparation, adoption, and implementation of plans for the desegregation of public schools.

6. Planning and evaluation:

Elementary and Secondary Education Act Amendments of 1967, Section 402. This section authorizes grants, contracts or other payments for planning and evaluating any programs for which the Commissioner of Education has responsibility for administration.

These particular authorities were selected because they met the following criteria:

- focus on elementary and secondary education
- can be used for student and teacher services
- are discretionary authorities
- do not have formulas which would channel funds away from areas of greatest need
- are designed to support and encourage demonstration activities
- are flexible in the range of activities which can be approved
- are clearly related and appropriate to the needs of school districts undergoing desegregation
- have authorization levels which are sufficiently above current levels of appropriation to permit additional appropriations.

Activities to be supported

To minimize disruption of the educational process and to maintain quality education during the change to a unitary system, a vast array of vital activities must be supported. Teachers need to be trained and made aware of the skills required to teach effectively in integrated classrooms. Teacher aides must be employed and trained to maximize instructional activities for students who may

need to catch up academically. Guidance, counseling and testing programs must be redesigned and updated to serve new needs. New and innovative instructional approaches must be designed, including remedial, tutorial, work-study, and bilingual programs, if overall educational quality is to be maintained and enhanced. Community information and communication programs that develop and build confidence in the public education system and promote understanding and acceptance must be designed, staffed and implemented. In addition, facilities must be modified to accomodate school consolidation.

Office of Education

Emergency School Assistance

	1970 Presently Available Pos.	Amount	Revised Estimate Pos.	Amount	Increase Pos.	Amount
1. Special educational personnel and student programs.....	--	---	--	$115,000,000	--	$+115,000,000
2. Community participation program.....	--	---	--	15,000,000	--	+15,000,000
3. Equipment and minor remodeling.....	--	---	--	17,900,000	--	+17,900,000
4. Federal administration and technical assistance.....	--	---	100	2,100,000	+100	+2,100,000
Total obligations...	--	---	100	150,000,000	+100	+150,000,000

General Statement

School districts will be encouraged to review carefully the local problems anticipated during the desegregation process, identifying programs and resources to overcome their problems. Funding will be based upon each district's needs rather than a standard program. School districts will be required to carefully plan their programs and build in evaluation components designed to assess the program's effectiveness in meeting stated objectives. State and Federal personnel will be available to provide assistance in the identification of problems, the development of program requirements, and the management of the program.

The following estimates by program activity represent a rough approximation of how the supplemental request will be used. It is based upon the judgements of present Office of Education staff who have been working closely with southern school superintendents. Although needs will vary from one school district to another, it is expected that approvable projects will need to be both large enough and comprehensive enough to make a difference. If the objective of this program--to maintain quality education during desegregation--is to be realized, projects will have to be multi-faceted. Community participation, special personnel and services, administrative and logistical help, and technical assistance are all important elements of a successful program.

A supplemental appropriation of $150 million would provide an average of $150,000 for each of the approximately 1,000 eligible school districts. Assuming an average of 10 schools per school district, this would mean about $15,000 per school.

In total, the target population includes about 7.2 million students, of whom 2.5 million are minority students, and approximately 335,000 educational personnel.

	Presently Available	Revised Estimate	Increase
1. Special educational personnel and student programs.....	---	$115,000,000	$+115,000,000

The following activities would be supported:

A. Special personnel

--- Temporary teachers - to provide release time for regular instructional personnel to participate in desegregation workshop activities.

--- Teacher aides - to reduce pupil-teacher ratios in order to give more attention to individual students.

--- Special guidance and counseling and testing staff - to assist and counsel principals, teachers, and students in order to provide educational programs that will remedy student deficiencies.

--- Monitors - parents in the school community to preform services that will reduce potential behavioral problems on school buses and school grounds.

--- Crossing guards - to provide staff that will maximize safety precautions for children who may be taking new and different routes to school.

--- Administrative and clerical staff - to provide additional personnel and time for implementation of desegregation plans, e.g., additional month of employment during summer for principals.

B. Student services

--- Remedial programs - to provide specialists, books and supplies for remediation in allsubject areas in which students are deficient.

--- Guidance and counseling - to provide adequate guidance and counseling staff in order to deal with student adjustment problems resulting from the desegregation process.

--- Diagnostic evaluation and testing programs - to provide diagnosticians trained to evaluate special sight, hearing and psychological problems of students.

--- Work-study programs - to provide children from poverty level families with specially-designed school programs that would afford them financial assistance so as to continue their education.

--- Health and nutrition services - to provide specialized personnel and services for students having health and nutrition deficiencies.

--- Dropout prevention programs.

--- Student relations - to provide special programs designed to assist students on problems such as acceptance, behavior, dress codes, etc.

C. Educational personnel development

--- Seminars on problems incident to desegregation - to provide training with skilled experts in the area of human relations so as to minimize problems incident to desegregation.

--- Seminars on teacher interpersonal relationships - to facilitate positive interpersonal relations among educational personnel through training by skilled professionals in an intercultural understanding.

--- Utilization of university expertise through institutes and inservice programs to deal with such problems as:

Teaching bilingual children

Teaching children with speech and dialect deficiencies

Attitudes and problems of teachers, parents and students involved in the desegregation process

Upgrading basic skills and instructional methodologies of teachers in English, math, science, social sciences, language arts, etc.

D. Curriculum development

--- Utilization of expert consultants to shape and design new curricula approaches and to introduce curriculum innovations that would serve children with multi-ethnic backgrounds.

--- New and varied instructional materials

--- Improved evaluation and assessment of student progress.

E. Special demonstration projects

--- Projects for introduction of innovative instructional methodologies which will improve the quality of education in the desegregated school:

Individualized instruction

Master teachers

Team teaching

Non-graded programs

--- Special projects involving community agencies and parents - to develop joint projects between special-interest and civic groups, parents and the schools which would promote understanding among citizens. Such projects could include sponsoring citywide and countywide art and music festivals, public meetings on relevant school problems (drug abuse, behavior, etc.).

--- Exemplary instructional practices - to operate pilot projects which would demonstrate exemplary instructional practices suitable for systemwide replication and for other school districts involved in the desegregation process.

F. State and local planning and administration

--- Expand technical assistance capabilities at the State education agency level - to provide additional personnel to assist the local education agency in planning for desegregation.

--- Temporary staff at the local level to handle administrative details and clerical duties - to provide additional temporary staff to deal with the logistics of changing from a dual to a unitary system. For example, rescheduling of students and teachers, redrawing transportation routes, supervision of necessary physical changes (moving of equipment, building renovation, etc.).

--- Staff at the local level for planning and supervising the implementation of the desegregation plan.

	Presently Available	Revised Estimate	Increase
2. Community participation programs..	---	$ 15,000,000	$ +15,000,000

The following activities would be supported:

A. Public information activities

--- Community information programs for parents, teachers, and students - to provide factual information about the desegregation plan and school programs.

--- Public information coordinator - to provide for a person on superintendent's staff to promote public information activities.

B. Community programs

--- Establishment and support of a biracial committee.

--- School-home visitation programs - an activity to be performed by educational personnel to assist with dissemination of information about school programs and student progress in the desegregated school.

--- Special parent programs - to provide programs designed to increase parents' involvement with the schools' programs, i.e. PTA, Education Emphasis Week, etc.

--- Community-relations coordinator - to provide a person on superintendent's staff to plan, organize and implement programs for students and parents involved in the desegregation process.

--- Special demonstration projects designed to keep communication open, build understanding and develop community support.

	Presently Available	Revised Estimate	Increase
3. Equipment and minor remodeling....	---	$ 17,900,000	$ +17,900,000

The following activities would be supported:

--- Procurement and relocation of temporary classrooms (trailers, mobile facilities and demountables).

--- Procurement and relocation of equipment and classroom funiture, including replacement of obsolete items.

--- Minor building renovation and remodeling for general upgrading of a facility including painting, modernizing, and partitioning.

	Presently Available		Revised Estimate		Increase	
	Pos.	Amount	Pos.	Amount	Pos.	Amount
4. Federal administration and technical assistance:						
Personnel compensation and benefits.....	---	---	100	$1,397,000	+100	$+1,397,000
Other expenses.....	---	---		703,000		+ 703,000
Total.....	---	---	100	2,100,000	+100	+2,100,000

An amount of $2.1 million and 100 positions is requested to administer the Emergency School Assistance Program. This new effort will require:

-- Developing entirely new procedures and regulations which will allow the Office of Education to administer a unified, coordinated program within the six separate authorities under which funds are being requested. This will include notices to potential grantees of the terms and conditions under which grants will be available, unified application forms, regulation notices in the Federal Register, and review, approval, award and accounting procedures.

-- Assisting schools and other interested parties in the development of applications.

-- Reviewing and monitoring an estimated 1,000-1,500 projects for assistance.

-- Providing program assistance and disseminating information to hundreds of State and local school officials.

In addition to these direct program services, a small supporting staff will be necessary in Washington and the regional offices to coordinate program activities, provide general guidance and other necessary administrative functions such as accounting, grants management and personnel.

Of the 100 additional positions requested, 82 will be professional staff and 18 will be secretarial and clerical positions. Eighty-one will be located in the three southern HEW regional offices with 19 in Washington, D. C.

The additional professional positions are required for the following specific purposes:

Project development, review, monitoring and evaluation..... +50 positions

Fifty education program specialists will be required to handle the several phases of the some 1,000 project applications anticipated. This will mean that each specialist will be handling approximately 20 projects of varying size and scope. Because of the short lead-time involved and the unfamiliarity of many of the target school districts with developing proposals, it is expected that this workload will be quite demanding and fully justify the additional staff requested. Program specialists will need to go out and talk with local school officials, inform them of the assistance available, help them develop acceptable applications, help them with devising educationally sound programs, help with the installation of evaluation components and finally, monitor projects throughout the year, helping to make modifications as plans change and programs develop.

Development of program guidelines, program models and evaluation techniques..... +12 positions

Twelve program development specialists will help develop materials which can be used by education program specialists in working with local school officials. This will include information on successful projects in other States and communities. The program guidelines and models will indicate, for example, what goes into making a successful guidance and counseling program, bilingual education program, special reading program, etc. These specialists will be educators who have a sound background in these special fields.

Developing uniform grant and contract terms and conditions..... +8 positions

Eight specialists will be required to help develop common rules and regulations for the award of grants and contracts. These will include such subjects as the disposition and accountability of equipment, determination of allowable costs, etc. This is an extremely important task in view of the several legislative authorities involved. It will be important to develop a common set of rules which will satisfy all the authorities involved.

Management and administrative overhead..... +12 positions

The above staff will in turn require certain central support in both the regions and Washington. This will include persons in administrative services, accounting, personnel operations, and management. Eight of these positions will be in the regional offices.

It is important to emphasize that while certain minimum Federal requirements on accountability of funds and other matters must be met by all school districts, the program assistance and development will be strictly optional at the discretion of local school officials. There is no intention of having the Office of Education offering gratuitous advice. It is expected, however, that many schools will welcome whatever help is available. Many of the staff involved will be drawn from the local region and will be selected for their judgement, maturity, and experience as well as professional competence.

Even though the program funds will have to be obligated by September 30, 1970, most projects will probably continue throughout the school year. For this reason, a special provision has been included in the appropriation language which will make funds for administrative activities available through June 30, 1971. To launch this program as soon as possible, it is expected that some existing staff will be diverted to start up the program. For this reason, it is expected that the 100 new positions will be on board for approximatley 85 percent of the fiscal year.

Administrative funds for Emergency School Assistance Program

Personnel Compensation:	
Permanent	$1,200,000
Positions other than Permanent	100,000
Other Personnel Compensation	---
Sub-total, Personnel Compensation	1,300,000
Personnel Benefits (7.5%)	97,000
Travel and Transportation of Persons (71 employees X $50 per diem X 90 days)	313,000
Transportation of things	---
Rent, Communication and Utilities	207,000
(GSA - 100 employees X $900 lapsed 15%)	(77,000)
(Utilities - 100 employees X $1,300)	(130,000)
Printing and Reproduction (100 employees X $420)	42,000
Other Services (100 employees X $900 lapsed 15%)	77,000
Supplies and Materials (100 employees X $140)	14,000
Equipment (100 X $500)	50,000
Total	2,100,000

Total number of permanent employees	100
Full-time equivalent of others	12
Average number of all employees	97
Average cost per man year	$ 14,410

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Education

Emergency School Assistance

Positions	Number	Grade	Annual Salary
Education Program Officer	5	GS-15	$ 114,425
Education Program Specialist	16	GS-14	314,288
Program Analyst	3	GS-14	58,929
Education Program Specialist	20	GS-13	335,200
Grants and Contract Specialist	1	GS-13	16,760
Education Program Specialist	14	GS-12	198,688
Grants and Contract Specialist	6	GS-12	85,152
Education Program Specialist	2	GS-11	23,810
Management Analyst	2	GS-11	23,810
Grants and Contract Specialist	1	GS-11	11,905
Budget Analyst	1	GS-11	11,905
Education Program Specialist	6	GS-9	59,286
Education Program Specialist	2	GS-7	16,178
Personnel Staffing Assistant	1	GS-7	8,089
Accounting Technician	2	GS-7	16,178
Secretary	5	GS-6	36,470
Secretary	8	GS-5	52,384
Clerk-Typist	3	GS-4	17,559
Clerk-Typist	2	GS-2	9,242
TOTAL	100		1,410,258

Regulations for the Emergency School Assistance Program

TITLE 45—PUBLIC WELFARE

CHAPTER I—OFFICE OF EDUCATION
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Part 181—Emergency School Assistance Program

The regulations set forth in this Part are applicable to the Emergency School Assistance Program (hereinafter "the program"), which will be administered by the Commissioner of Education. Authority to carry out the program is based upon the following statutory provisions:

1. The Education Professions Development Act, Part D (20 U.S.C. 1119–1119a).
2. The Cooperative Research Act (20 U.S.C. 331–332b.)
3. The Civil Rights Act of 1964, Title IV (42 U.S.C. 2000c–2000c–9).
4. The Elementary and Secondary Education Act of 1965, section 807 (20 U.S.C. 887).
5. The Elementary and Secondary Education Amendments of 1967, section 402 (20 U.S.C. 1222).
6. The Economic Opportunity Act of 1964, Title II (42 U.S.C. 2781–2837) (under authority delegated to the Secretary of Health, Education, and Welfare).

Regulations previously published pursuant to the foregoing statutory authorities will not be applicable to the program.

Federal financial assistance provided pursuant to the Emergency School Assistance Program is subject to the regulation in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare and approved by the President, to effectuate the provisions of section 601 (42 U.S.C. 2000d) of the Civil Rights Act of 1964 (P.L. 88–352).

Sec.

AUTHORITY: The provisions of this Part 181 are issued under 20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837.

§181.1 *Definitions.*

As used in this part:

(a) The term "Commissioner" means the United States Commissioner of Education.

(b) The term "desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" does not mean the assignment of students to public schools in order to overcome racial imbalance.

(42 U.S.C. 2000c)

(c) The term "local educational agency" means a public board of education or other public authority legally constituted within a State either for administration control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies; and includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(20 U.S.C. 881)

(d) The term "minority group", with reference to any person or persons, means a person or persons of Negro, American Indian, Mexican-American, or Puerto Rican origin or ancestry.

(e) The term "nonprofit" as applied to an agency, organization, or institution means an agency, or organization, or institution owned or operated by one or more nonprofit corporations or associations no part of the net earnings of which inures or may lawfully inure, to the benefit of any private shareholder or individual.

(20 U.S.C. 881)

(f) The term "secondary school" means a school which provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

(20 U.S.C. 881)

(g) The term "terminal phase", as it relates to a desegregation plan, means that phase of the plan at which the local educational agency begins operating a unitary school system within which no person is effectively excluded from any school because of race or color.

(*Alexander* v. *Holmes Co.* 396 U.S. 19 (1969))

§ 181.2 *Purpose.*

The purpose of the emergency assistance to be made available under the program described in this part is to meet special needs incident to the elimination of racial segregation and discrimination among students and faculty in elementary and secondary schools by contributing to the costs of new or expanded activities to be carried out by local educational agencies or other agencies, organizations, or institutions and designed to achieve successful desegregation and the elimination of all forms of discrimination in the schools on the basis of students or faculty being members of a minority group.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

§ 181.3 *Eligibility.*

(a) Assistance under the program may be made available to a local educational agency

(1) which has submitted to the Office for Civil Rights of the Department of Health, Education, and Welfare a final order of a State or Federal court or a voluntary plan for the desegregation of the schools operated by such agency, which order or plan (A) is accompanied by the Assurance of Compliance with Title VI of the Civil Rights Act of 1964 described in 45 CFR 80. 4(c) and (B) has been determined to be acceptable under such provision; and

(2) which (A) is to commence the terminal phase of such plan or order by the opening of the 1970–1971 academic year or (B) has commenced such terminal phase during the 1968–1969 or 1969–1970 academic year.

(b) In any case where the Commissioner finds that it would more effectively carry out the purposes of the program, he may make a grant to any public or nonprofit private agency, organization, or institution (other than a local educational agency), and contract with any public or private agency, institution, or organization to assist in the implementation of one or more desegregation plans described in subsection (a).

(c) The Commissioner initially will reserve for use pursuant to subsection (b) ten percent of the funds made available for the program. Any of such reserved funds not used pursuant to subsection (b) within such time as the Commissioner may determine will be made available for use by local educational agencies pursuant to subsection (a).

(20 U.S.C. 119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

§ 181.4 *Authorized Activities.*

Projects assisted under the program shall be designed to contribute to achieving and maintaining desegregated school systems and should emphasize such activities as the following:

(a) carrying out special community programs designed to assist school systems to implement desegregation plans such as (1) promoting understanding among students, school staffs, parents and community groups; (2) conducting community information programs to provide information concerning desegregation;

(3) establishing and supporting committees consisting of minority and nonminority group members; (4) conducting school-home visitation programs; and (5) conducting special parent programs designed to facilitate the implementation of the desegregation plans;

(b) carrying out special pupil personnel services designed to assist in maintaining quality education during the desegregation process such as (1) providing special guidance and counseling personnel with expertise in working with a desegregated student body; (2) providing remedial and other services to meet special needs of children affected by desegregation; and (3) employing special consultants;

(c) carrying out special curriculum revision programs and special teacher preparation programs required to meet the needs of a desegregated student body such as (1) developing new and varied instructional techniques and materials designed to meet the special needs of children affected by desegregation; (2) designing and introducing new curricula that serve children from various ethnic backgrounds; (3) developing new material and techniques for improved evaluation and assessment of student progress; (4) carrying out special demonstration projects for the introduction of innovative instructional methodologies which will improve the quality of education in desegregated schools; (5) providing for individualized instruction, team teaching, nongraded programs, and the employment of master teachers; (6) establishing inservice programs to assist teachers in dealing with children who have inadequate English language skills; (7) promoting greater understanding of the attitudes and interpersonal relationships of students and teachers involved in the desegregation process; (8) upgrading basic skills and instructional methodologies; (9) mobilizing university and consultant expertise in developmental programs and seminars on problems incident to desegregation; (10) providing temporary teachers whose employment will permit permanent teachers to participate in training related to desegregation; and (11) providing teacher aides whose employment will help improve instruction in schools affected by desegregation;

(d) carrying out special student-to-student programs designed to assist students in opening up channels of communication concerning problems incident to desegregation such as (1) promoting mutual acceptance; (2) promoting greater understanding of racial peer pressures of students; (3) assisting student groups to develop interracial understanding; (4) involving groups consisting of minority and nonminority group students in curriculum revision; and (5) assisting groups consisting of minority and nonminority group students to plan and conduct desegregated extra-curricular activities:

(e) carrying out special comprehensive planning and logistic support designed to assist in implementing a desegregation plan such as (1) employing additional administrative and clerical personnel necessary for implementation of a plan; (2) assisting in the rescheduling and reassignment of students and teachers and the redrawing of transportation routes; (3) supervising necessary physical changes; and (4) minor repairing and minor remodeling of existing facilities and leasing or purchasing of mobile or demountable classroom units.

Assistance may also be provided for any other specially designed project which the Commissioner determines will meet the purposes of the program.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

§ 181.5 *Allotment.*

(a) The Commissioner will allot the funds made available under the program among the States by allotting to each State an amount which bears the same ratio to the total amount of funds available as the number of minority group children aged 5 to 17, inclusive (as determined by the Commissioner on the basis of the most recent satisfactory data available to him), in the State who are in local educational agencies eligible for assistance under § 181.3 bears to the number of such minority group children in all of the States.

(b) That part of any State's allotment which the Commissioner determines will not be needed may be reallotted, on such dates as the Commissioner may fix, in proportion to the original allotments, but with appropriate adjustments to assure that any amount so made available to any State in excess of its needs is similarly reallotted among the other States.

(c) In no event will more than 12½ percent of the funds allotted be used in any one State.

(42 U.S.C. 2812)

§ 181.6 *Application.*

(a) An application of a local educational agency for assistance under the program shall—

(1) set forth a comprehensive statement of the problems faced by that agency in achieving and maintaining a desegregated school system, including a comprehensive assessment of the needs of the children in such agency;

(2) describe one or more activities that are designed to comprehensively and effectively meet such problems with assistance requested under the program;

(3) provide for effective procedures for evaluation (as further described in § 181.9);

(4) contain assurances satisfactory to the Commissioner, accompanied by such supportive information as he may require:

(A) that Federal funds made available under the program for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be available to the applicant from non-Federal sources for purposes which meet the requirements of the program, and in no case to supplant such funds;

(B) that Federal funds made available under the program will not be used to supplant funds which (i) were available to the applicant from non-Federal sources prior to the implementation by the applicant of an order or plan for the desegregation of its schools and (ii) have been withdrawn or reduced as a result of desegregation. For the purposes of this paragraph, a reduction as a result of desegregation shall not be deemed to have taken place where non-Federal funds available to a local educational agency pursuant to State statute are reduced by operation of such statute, solely on account of a decline in such agency's enrollment or its transportation needs;

(C) that a reasonable effort is being made to utilize other Federal funds available for meeting the needs of children;

(D) that the applicant (i) has not engaged in the gift, lease, or sale of property or services, directly or indirectly, to any nonpublic school or school system which, at the time of such transaction, practiced discrimination on the basis of race, color, or national origin, where such gift, lease, or sale was for the purpose of, or had the effect of, encouraging, facilitating, supporting, or otherwise assisting the operation of such school or school system as an alternative available to non-minority group students seeking to avoid desegregated public schools; and (ii) will not engage in the gift, lease, or sale of property or services to any such school or school system for any purpose;

(P.L. 91—)

(E) that staff members of the local educational agency who work directly with children, and professional staff of such agency who are employed on the administrative level, will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to being members of minority groups;

(F) that the local educational agency will take effective action to ensure the assignment of staff members who work directly with children at a school so that the ratio of minority to nonminority group teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system;

(G) that no practices or procedures, including testing, will be employed by the local educational agency in the assignment of children to classes, or otherwise in carrying out curricular or extracurricular activities, within the schools of such agency in such a manner as (i) to result in the isolation of minority and nonminority group children in such classes or with respect to such activities; or (ii) to discriminate against children on the basis of their being members of a minority group;

(H) that the applicant will have published in the local newspaper of general circulation the terms and provisions of each project approved by the Commissioner within thirty days of such approval, or will have published in a local newspaper of general circulation, within thirty days

of such approval, pertinent information as to the manner in which, and the place at which, the terms and provisions of such approved project are made reasonably available to the public;

(I) that the applicant will complete and submit to the Office for Civil Rights of the Department of Health, Education, and Welfare, by October 15, 1970, or such other time as may be determined by that office, an evaluation form to be furnished by that Office; and

(J) that the applicant will furnish to the Commissioner such additional information as he may deem necessary for the administration of the program.

(b) An application of a public or nonprofit private agency, organization, or institution (other than a local educational agency) for a grant under the program shall—

(1) set forth a statement of the problems as seen from the point of view of such agency, organization, or institution, of achieving one or more desegregated school systems in the relevant community or communities;

(2) describe any previous involvement and concern of such agency, organization, or institution with education or school desegregation:

(3) describe the activities which such agency, organization, or institution proposes to undertake for the purpose of assisting in the implementation of one or more desegregation plans described in § 181.3(a), including a description of the manner in which such activities would contribute to achieving and maintaining one or more desegregated school systems;

(4) contain an assurance satisfactory to the Commissioner that such agency, organization, or institution will furnish him such additional information as he may deem necessary for the administration of the program.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

§ 181.7 *Advisory Committees.*

(a) In the case of a local educational agency with respect to which a bi-racial committee has been formed pursuant to an order of a Federal or State court, for the desegregation of the school system of such agency, such committee shall, prior to the submission of any application pursuant to § 181.6(a), be afforded a period of five days in which to review and comment to the local educational agency upon such application. Upon submission to the Commissioner, such application shall be accompanied by any comments of such committee.

(b)(1) In the case of any other local educational agency, such agency shall, prior to submission of an application pursuant to § 181.6(a), select at least five but not more than fifteen organizations which in the aggregate are broadly representative of the minority and nonminority communities to be served. Those organizations that have been established pursuant to, or with respect to, other Federal programs, such as Community Action Agencies, City Demonstration Agencies, Title I Advisory Committees, Head Start Parents Advisory Committees, and 4–C Committees, should ordinarily be among those selected. Upon submission to the Commissioner, such application shall be accompanied by the names of the organizations so selected. Each such organization selected by the local educational agency may appoint one member to an advisory committee that shall be established by such agency within thirty days of approval by the commissioner of its application.

(2) In addition to members appointed to the advisory committee by organizations selected by the local educational agency pursuant to paragraph (1) of this subsection, the local educational agency shall appoint to the advisory committee such additional persons from the community as may be needed in order to establish an advisory committee composed of equal numbers of minority and nonminority persons, at least 50 percent of whom shall be parents whose children will be directly affected by the project to be carried out under the program.

(c) The local educational agency shall consult with any advisory committee formed pursuant to court order as described in subsection (a), or established pursuant to subsection (b), with respect to policy matters arising in the administration and operation by such agency of each project assisted under the program. The advisory committee shall be given a reasonable opportunity to observe and comment upon all project-related activities of the local educational agency.

(d) The names of the members of any committee described in this section shall be made public by the local educational agency.

57–952 O—71——16

§ 181.8 *Student Advisory Committees.*

In addition to other assurances required under this part, the application of a local educational agency shall contain an assurance that, promptly following the opening of the 1970–71 academic year, a student advisory committee will be formed in each secondary school affected by the project which has a student body composed of minority and nonminority group children. The number of minority and nonminority students serving on each such committee shall be equal. The members of each such committee shall be selected by the student body. The local educational agency shall consult with the student advisory committee with respect to the carrying out of the project and the establishment of standards, regulations, and requirements regarding student activities and affairs.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

§ 181.9 *Evaluation.*

An applicant receiving assistance under the program shall include in the application a description of the methods, procedures and objective criteria to be used to evaluate the effects of each project to be assisted. Such evaluation shall be carried out by a qualified agency, institution, or organization, as determined by the Commissioner, (1) which is independent of the applicant and (2) which agrees to follow the employment practices which are required of a Federal contractor under Executive Order 11246 as amended. Such agency, institution, or organization shall conduct a continuing evaluation of such project, including its effectiveness in achieving clearly stated goals. An interim report of such evaluation shall be submitted to the Commissioner not later than May 1, 1971, and the final report of such evaluation shall be submitted to the Commissioner as a part of the final project report.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

§181.10 *Priorities.*

In determining whether to provide assistance under the program, or in fixing the amount thereof, the Commissioner will consider such criteria as he deems pertinent, including—

(1) the applicant's relative need for assistance;

(2) the relative promise of the project or projects to be assisted in carrying out the purpose of the program;

(3) the extent to which the proposed project deals comprehensively and effectively with problems faced by the local educational agency in achieving and maintaining a desegregated school system;

(4) the amount available for assistance under the program in relation to the applications pending before him.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

§ 181.11 *Review by State educational agency.*

The Commissioner will not approve an application for assistance pursuant to § 181.6 without first affording the appropriate State educational agency a reasonable opportunity to review and make recommenations with respect to such application.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

§ 181.12 *Non-Federal contributions.*

In view of the emergency nature of the program and the fact that most local educational agencies have already determined their budgets for the 1970–1971 academic year, the Commissioner will not require an applicant to contribute to the costs of the project if the application is accompanied by an assurance satisfactory to him that the applicant does not have available adqeuate resources for that purpose.

(42 U.S.C. 2813)

§ 181.13 *Submission and disposition of application.*

The Commissioner will notify each applicant of the approval, disapproval, or other disposition of the application.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

§ 181.14 *General Terms and Conditions.*

Grants provided pursuant to this Part will be subject to the General Terms and Conditions for the Emergency School Assistance Program, published as Appendix A to this Part and incorporated herein by reference. Activities carried out under the authority of Title II of the Economic Opportunity Act of 1964 will be carried out in conformance with the Memorandum of Understanding between the Office of Economic Opportunity and the Department of Health, Education, and Welfare, published as Appendix B to this Part and incorporated herein by reference.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

Dated: August 7, 1970.

T. H. BELL,
Acting U.S. Commissioner of Education.

Approved: August 7, 1970.

ELLIOTT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

APPLICATION FOR EMERGENCY SCHOOL ASSISTANCE

PAGE 1 OF 15 PAGES

FOR U.S.O.E. USE ONLY

GRANT NUMBER

SECTION I - APPLICANT INFORMATION

1. NAME OF LOCAL EDUCATION AGENCY (OR OTHER ELIGIBLE APPLICANT)		2. ADDRESS NUMBER AND STREET		
3. CITY	4. STATE	5. ZIP CODE	6. COUNTY	7. CONG. DIST.
8. PRINT OR TYPE NAME OF AUTHORIZED REPRESENTATIVE		9. SIGNATURE OF AUTHORIZED REPRESENTATIVE		10. DATE
11. TITLE OF AUTHORIZED REPRESENTATIVE				

SECTION II - APPLICATION INFORMATION

12. FEDERAL FUNDS REQUESTED (TOTAL PROJECT)	13. PERIOD OF PROPOSED PROJECT						14. DATE APPLICATION RECEIVED	15. DATE APPLICATION APPROVED
	STARTING DATE			ENDING DATE				
	MONTH	DAY	YEAR	MONTH	DAY	YEAR		
$								

16. PRINT OR TYPE NAME OF APPROVING OFFICER (FOR OE USE)	17. SIGNATURE OF APPROVING OFFICER	18. DATE
19. TITLE OF APPROVING OFFICER		

CLEARANCE BY THE STATE EDUCATIONAL AGENCY

THIS APPLICATION FOR EMERGENCY SCHOOL ASSISTANCE HAS BEEN REVIEWED BY A DESIGNATED REPRESENTATIVE OF THE CHIEF STATE SCHOOL OFFICER.

☐ NO COMMENT ☐ COMMENTS ATTACHED

20. PRINT OR TYPE NAME OF CSSO REPRESENTATIVE	21. SIGNATURE OF CSSO REPRESENTATIVE	22. DATE
23. TITLE OF CSSO REPRESENTATIVE		

CLEARANCE BY THE OFFICE OF THE GOVERNOR

THIS APPLICATION FOR EMERGENCY SCHOOL ASSISTANCE HAS BEEN REVIEWED BY A DESIGNATED REPRESENTATIVE OF THE GOVERNOR

☐ NO COMMENT ☐ COMMENTS ATTACHED

24. PRINT OR TYPE NAME OF GOVERNOR'S REPRESENTATIVE	25. SIGNATURE OF GOVERNOR'S REPRESENTATIVE	26. DATE
27. TITLE OF GOVERNOR'S REPRESENTATIVE		

SECTION III - PROJECT INFORMATION

28. SCHOOLS WITHIN THE DISTRICT WHICH WILL BE INVOLVED IN THE EMERGENCY SCHOOL ASSISTANCE PROGRAM

NAME OF SCHOOL	ADDRESS (NUMBER, STREET, CITY, STATE, AND ZIP CODE)

OE FORM 5279, 7/70

(DRAFT)

(CONTINUE ON REVERSE)

28. SCHOOLS WITHIN THE DISTRICT WHICH WILL BE INVOLVED IN THE EMERGENCY SCHOOL ASSISTANCE PROGRAM (CONTINUED)

NAME OF SCHOOL	ADDRESS (NUMBER, STREET, CITY, STATE, AND ZIP CODE)

28A. **NUMBER OF STUDENTS BEING REASSIGNED UNDER THE APPROVED DESEGREGATION PLAN**

IF MORE SPACE IS NEEDED FOR LISTING OF SCHOOLS, CONTINUE ON ATTACHED SHEET(S).

29. PRESENT ASSURANCE OF COMPLIANCE (CHECK APPROPRIATE BOX, AND ATTACH COPY OF DESEGREGATION PLAN)

☐ FORM HEW 441 ☐ FORM HEW 441-B ☐ COURT ORDER

☐ OTHER (SPECIFY)

30. EVALUATION BY ADVISORY COMMITTEE

A. COMPOSITION OF ADVISORY COMMITTEE	NUMBER OF NON-MINORITY RACE MEMBERS	
	NUMBER OF MINORITY RACE MEMBERS	

B. NAMES OF MEMBERS, METHOD OF SELECTION, AND ORGANIZATIONS REPRESENTED (ATTACH SEPARATE SHEET(S).

C. ATTACH COPY OF ADVISORY COMMITTEE EVALUATION OF PROJECT PROPOSAL.

(DRAFT)

NAME OF LOCAL EDUCATION AGENCY (OR OTHER ELIGIBLE APPLICANT) | PAGE 3 OF 15 PAGES

SECTION III – PROJECT INFORMATION (CONTINUED)

WORKSHEET DATA FOR PROPOSED EMERGENCY SCHOOL ASSISTANCE ACTIVITIES

31A. CHECK APPROPRIATE BOXES FOR THOSE ACTIVITIES SELECTED FOR IMPLEMENTATION AND DETAILED IN ITEM 32. BRIEFLY INDICATE FOR EACH CHECKED ACTIVITY THE FOLLOWING:

1. DESEGREGATION PROBLEMS THE ACTIVITY WILL ATTACK.
2. NEEDS OF THE CHILDREN OF THE DISTRICT THE ACTIVITY WILL MEET (IF DIFFERENT FROM 1 ABOVE).
3. METHODS, PROCEDURES, AND OBJECTIVE CRITERIA TO BE USED TO EVALUATE THE EFFECTS OF THE ACTIVITY.

☐ (A) SPECIAL COMMUNITY PROGRAMS

(1) PROMOTING UNDERSTANDING AMONG STUDENTS, SCHOOL STAFFS, PARENTS AND COMMUNITY GROUPS

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(2) COMMUNITY INFORMATION PROGRAMS

(A) PROBLEMS

(B) NEEDS.

(C) EVALUATION

(3) COMMITTEES SUPPORT (ADVISORY AND/OR STUDENT ADVISORY)

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(4) SCHOOL-HOME VISITATION PROGRAM

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

WORKSHEET DATA FOR PROPOSED EMERGENCY SCHOOL ASSISTANCE ACTIVITIES (CONTINUED)

☐ (B) SPECIAL PUPIL PERSONNEL SERVICES

(1) SPECIAL GUIDANCE AND COUNSELING WITH PARTICULAR REFERENCE TO DESEGREGATION PROBLEMS

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(2) REMEDIAL AND OTHER SERVICES TO MEET SPECIAL NEEDS

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(3) SPECIAL CONSULTANTS (E.G., DIAGNOSTICIANS TO EVALUATE SIGHT, HEARING, AND PSYCHOLOGICAL PROBLEMS OF STUDENTS)

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

☐ (C) SPECIAL CURRICULUM REVISION PROGRAMS

(1) NEW AND VARIED INSTRUCTIONAL TECHNIQUES AND MATERIALS TO SERVE CHILDREN FROM DIFFERENT ETHNIC AND CULTURAL BACKGROUNDS

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(2) NEW TECHNIQUES AND MATERIALS FOR IMPROVED EVALUATION OF STUDENT PROGRESS

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

NAME OF LOCAL EDUCATION AGENCY (OR OTHER ELIGIBLE APPLICANT) | PAGE 5 OF 15 PAGES

WORKSHEET DATA FOR PROPOSED EMERGENCY SCHOOL ASSISTANCE ACTIVITIES (CONTINUED)

SPECIAL CURRICULUM REVISION PROGRAMS (CONTINUED)

(3) SPECIAL DEMONSTRATION PROJECTS TO INTRODUCE INNOVATIVE INSTRUCTIONAL METHODOLOGIES FOR IMPROVING QUALITY

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

☐ (D) TEACHER PREPARATION PROGRAMS

(1) SPECIAL DEMONSTRATION PROJECTS (E.G., INDIVIDUALIZED INSTRUCTION, MASTER TEACHERS, TEAM TEACHING, NONGRADED PROGRAMS, EXEMPLARY INSTRUCTIONAL PRACTICES)

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(2) INSERVICE TRAINING PROGRAMS TO ASSIST TEACHERS IN LEARNING TO DEAL WITH CHILDREN WHOSE ENGLISH LANGUAGE SKILLS ARE INADEQUATE

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(3) METHODS FOR UPGRADING BASIC INSTRUCTIONAL SKILLS AND METHODS

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

WORKSHEET DATA FOR PROPOSED EMERGENCY SCHOOL ASSISTANCE ACTIVITIES (CONTINUED) | PAGE 6 OF 15 PAGES

TEACHER PREPARATION PROGRAMS (CONTINUED)

(4) MOBILIZING CONSULTANT EXPERTISE IN SEMINARS AND INSTITUTES FOR SOLVING PROBLEMS INCIDENT TO DESEGREGATION

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(5) TEMPORARY TEACHERS TO RELEASE PERMANENT TEACHERS FOR TRAINING RELATED TO DESEGREGATION

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(6) EMPLOYMENT OF TEACHER AIDES TO HELP TEACHERS IN CLASSROOMS AFFECTED BY DESEGREGATION BY REDUCING TEACHER LOAD

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

☐ (E) SPECIAL STUDENT-TO-STUDENT PROGRAMS

DEVELOPING CHANNELS OF COMMUNICATION OF INTERPERSONAL RELATIONS (E.G., MUTUAL ACCEPTANCE OF DIFFERENCES, BEHAVIOR AND DRESS CODES, UNDERSTANDING PEER GROUP PRESSURES, BIRACIAL INVOLVEMENT IN REVISING THE CURRICULUM (SEE STUDENT ADVISORY COMMITTEE) PLANNING AND CONDUCTING DESEGREGATED CLUBS AND OTHER EXTRACURRICULAR ACTIVITIES)

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

☐ (F) SPECIAL COMPREHENSIVE PLANNING AND LOGISTICAL SUPPORT

(1) ADDITIONAL ADMINISTRATIVE AND CLERICAL PERSONNEL

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(DRAFT)

NAME OF LOCAL EDUCATION AGENCY (OR OTHER ELIGIBLE APPLICANT) | PAGE 7 OF 15 PAGES

WORKSHEET DATA FOR PROPOSED EMERGENCY SCHOOL ASSISTANCE ACTIVITIES (CONTINUED)

SPECIAL COMPREHENSIVE PLANNING AND LOGISTICAL SUPPORT (CONTINUED)

(2) RESCHEDULING AND REASSIGNMENT OF STUDENTS AND TEACHERS

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(3) REDRAWING OF TRANSPORTATION ROUTES

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(4) SUPERVISING PHYSICAL CHANGES

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

(5) MINOR REPAIRING AND MINOR REMODELING OF EXISTING FACILITIES AND LEASING OR PURCHASING OF MOBILE OR DEMOUNTABLE UNITS

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

☐ (G) OTHER SPECIALLY DESIGNED ACTIVITIES (EXPLAIN)

(A) PROBLEMS

(B) NEEDS

(C) EVALUATION

WORKSHEET DATA FOR PROPOSED EMERGENCY SCHOOL ASSISTANCE ACTIVITIES (CONTINUED)

318. ACTIVITY RESOURCES - CURRENT AND PROJECTED

	AVAILABLE IN 1969-70		PLANNED FOR 1970-71			
			WITHOUT ESA FUNDS		WITH ESA FUNDS	
(1) SPECIAL COMMUNITY PROGRAMS	YES	NO	YES	NO	YES	NO
(A) PROMOTING UNDERSTANDING						
(B) COMMUNITY INFORMATION						
(C) COMMITTEE SUPPORT						
(D) SCHOOL-HOME VISITATION PROGRAM						

		ACTUAL NUMBER IN 1969-70		CURRENT PLAN, 1970-71 WITHOUT ESA FUNDS		NEW PLAN, 1970-71 WITH ESA FUNDS	
(2) SPECIAL PUPIL PERSONNEL SERVICES		STAFF	STUDENTS	STAFF	STUDENTS	STAFF	STUDENTS
(A) SPECIAL GUIDANCE AND COUNSELING	E						
	S						
(B) REMEDIAL AND OTHER	E						
	S						
(C) SPECIAL CONSULTANTS	E						
	S						
(3) SPECIAL CURRICULUM REVISION							
(A) NEW TECHNIQUES AND MATERIALS FOR BACKGROUND DIFFERENCES	E						
	S						
(B) NEW TECHNIQUES AND MATERIALS FOR EVALUATION OF STUDENT PROGRESS	E						
	S						
(C) DEMONSTRATION OF INNOVATIVE INSTRUCTIONAL METHODS	E						
	S						
(4) TEACHER PREPARATION PROGRAMS							
(A) SPECIAL DEMONSTRATION PROJECTS	E						
	S						
(B) INSERVICE TRAINING	E						
	S						
(C) METHODS FOR UPGRADING BASIC SKILLS	E						
	S						
(D) SEMINARS AND INSTITUTES	E						
	S						
(E) TEMPORARY TEACHERS	E						
	S						
(F) TEACHER AIDES	E						
	S						
(5) SPECIAL STUDENT-TO-STUDENT PROGRAMS	E						
	S						
(6) SPECIAL COMPREHENSIVE PLANNING AND SUPPORT							
(A) ADDITIONAL ADMINISTRATIVE AND CLERICAL PERSONNEL	E						
	S						
(B) RESCHEDULING AND REASSIGNMENT	E						
	S						
(C) TRANSPORTATION ROUTES	E						
	S						
(D) SUPERVISING PHYSICAL CHANGES	E						
	S						
(E) MINOR REPAIRING AND REMODELING; LEASE OR PURCHASE OF CLASSROOM UNITS	E						
	S						
(7) OTHER (EXPLAIN)	E						
	S						

(DRAFT)

NAME OF LOCAL EDUCATION AGENCY (OR OTHER ELIGIBLE APPLICANT)	PAGE 9 OF 15 PAGES

SECTION III – PROJECT INFORMATION (CONTINUED)

32. PROJECT DESCRIPTION (LIMIT TO THREE PAGES, IF POSSIBLE, IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS)

SECTION IV - EMERGENCY SCHOOL ASSISTANCE PROGRAM ACTIVITY BUDGET OUTLINE - FISCAL YEAR 19

ACTIVITY / COST CATEGORY	SPECIAL COMMUNITY PROGRAMS (1)	SPECIAL PUPIL PERSONNEL SERVICES (2)	SPECIAL CURRICULUM REVISION PROGRAMS (3)	TEACHER PREPARATION PROGRAMS (4)	SPECIAL STUDENT-TO-STUDENT PROGRAMS (5)	SPECIAL COMPREHENSIVE PLANNING (6)	OTHER (7)	TOTAL ALL ACTIVITIES (8)
A. EMPLOYEE SALARIES								
B. EMPLOYEE BENEFITS& SERVICES								
C. EMPLOYEE TRAVEL & PER DIEM								
D. CONTRACTED SERVICES								
E. COMMUNI-CATIONS								
F. OFFICE SUP-PLIES & MATERIALS								
G. REPRODUCATION DUPLICA-TION								
H. MISC. ADMIN. EXPENSES								
I. INSTRUC-TIONAL SUPPLIES								
J. STIPENDS& DEPENDENTS SUPPORT								
K. FACILITIES RENTAL								
L. FACILITIES PURCHASE								
M. FACILITIES IMPRVT.								
N. EQUIPMENT RENTAL								
O. EQUIPMENT PURCHASE								
P. TOTAL DIRECT COSTS								
Q. INDIRECT COSTS								
R. FED. FUNDS REQUESTED								

(DRAFT)

NAME OF LOCAL EDUCATION AGENCY (OR OTHER ELIGIBLE APPLICANT)	PAGE 11 OF 15 PAGES

SECTION V - STATEMENT OF ASSURANCES

The Applicant Hereby Assures the Commissioner that:

A. Federal funds made available under the program for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be available to the applicant from non-Federal sources for purposes which meet the requirements of the program, and in no case to supplant such funds.

B. Federal funds made available under the program will not be used to supplant funds which (i) were available to the applicant from non-Federal sources prior to the implementation by the applicant of an order or plan for the desegregation of its schools and (ii) have been withdrawn or reduced as a result of desegregation. For the purposes of this paragraph, a reduction as a result of desegregation shall not be deemed to have taken place where non-Federal funds available to a local educational agency pursuant to State statute are reduced by operation of such statute, solely on account of a decline in such agency's enrollment or its transportation needs.

1. Non-Federal funds available prior to court order or desegregation plan: $_____

2. Non-Federal funds available after court order or desegregation plan: $_____

If less than amount shown in (1) indicate whether on account of:

☐ a. Decline in enrollment

☐ b. Decline in transportation needs

☐ c. Other (Explain)

C. A reasonable effort is being made to utilize other Federal funds available for meeting the needs of children.

Indicate source of other Federal funds being utilized, or efforts being made to utilize other Federal funds.

D. The applicant (i) has not engaged in the gift, lease, or sale of property or services, directly or indirectly, to any nonpublic school or school system which, at the time of such transaction, practiced discrimination on the basis of race, color, or national origin, where such gift, lease, or sale was for the purpose of, or had the effect of, encouraging, facilitating, supporting, or otherwise assisting the operation of such school or school system as an alternative available to non-minority group students seeking to avoid desegregated public schools; and (ii) will not engage in the gift, lease, or sale of property or services to any such school or school system for any purpose.

Indicate below, the name and address of any nonpublic school or school system to which the applicant has given, leased, or sold, directly or indirectly, property or services. Show actual or estimated value of such property or services.

E. Staff members of the local educational agency who work directly with children, and professional staff of such agency who are employed on the administrative level, will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to being members of minority groups.

F. The local educational agency will take effective action to ensure the assignment of staff members who work directly with children at a school so that the ratio of minority to non-minority group teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system.

G. No practices or procedures, including testing, will be employed by the local educational agency in the assignment of children to classes, or otherwise in carrying our curricular or extracurricular activities, within the schools of such agency in such a manner as (i) to result in the isolation of minority and non-minority group children in such classes or with respect to such activities; or (ii) to discriminate against children on the basis of their being members of a minority group.

H. The applicant will have published in a local newspaper of general circulation the terms and provisions of each project approved by the Commissioner within thirty days of such approval, or will have published in a local newspaper of general circulation, within thirty days of such approval, pertinent information as to the manner in which, and the place at which, the terms and provisions of such approved project are made reasonable available to the public.

NAME OF LOCAL EDUCATION AGENCY (OR OTHER ELIGIBLE APPLICANT)	PAGE 13 OF 15 PAGES

SECTION V - STATEMENT OF ASSURANCES (CONTINUED)

I. The applicant will complete and submit to the Office for Civil Rights of the Department of Health, Education, and Welfare, by October 15, 1970, or such other time as may be determined by that Office, an evaluation report on a form to be furnished by that Office.

J. The applicant will furnish to the Commissioner such additional information as he may deem necessary for the administration of the program.

K. The control of funds provided under this authority and title to property derived therefrom, shall be in a public agency for the uses and purposes provided and that a public agency will administer such property and funds and apply them only for the purposes for which they are granted.

L. The applicant will make an annual report and such other reports to the U.S. Office of Education in such form and containing such information, as may be reasonably necessary to enable the U.S. Office of Education to perform its duties under this authority, including information relating to the educational achievement of students participating in those programs, and will keep such records and afford such access thereto as the U.S. Office of Education may find necessary to assure the correctness and verification of such reports.

M. In the case of construction required for the operation of the project:

1. The applicant will cause work on the project to be commenced within a reasonable time after receipt of notification that funds have been allotted and to be prosecuted to completion with reasonable diligence;

2. The rates of pay for laborers and mechanics engaged in the construction will be not less than the prevailing local wage rates for similar work as determined in accordance with Public Law Number 403 of the 74th Congress, approved August 30, 1935, as amended, under standards, regulations, and procedures prescribed by the Secretary of Labor; and

3. The applicant will comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to Executive Order 11246 of September 24, 1965, in connection with any contract for construction for which it receives Federal assistance.

N. The applicant agrees to an outside evaluation of the Emergency School Assistance program by a qualified educational organization or association approved by the U.S. Commissioner of Education. The evaluation report will be submitted to the Board of Education and to the U.S. Commissioner of Education.

O. In operating its program, the applicant will comply with Emergency School Assistance program regulations, program Manual, and Grant or Contract terms and conditions.

TYPE OR PRINT NAME OF AUTHORIZED OFFICIAL	SIGNATURE OF AUTHORIZED OFFICIAL	DATE

SECTION VI - CERTIFICATION OF ACCOUNTING SYSTEM ON PAGE 15

(DRAFT)

NAME OF LOCAL EDUCATION AGENCY (OR OTHER ELIGIBLE APPLICANT)	PAGE 15 OF 15 PAGES

SECTION VI - CERTIFICATION OF ACCOUNTING SYSTEM

A. (To be used when certification is by a public financial officer.)

As chief financial officer of _____
(NAME OF EMPLOYING OFFICE)

I am responsible for providing financial services to

_____
(NAME OF LOCAL EDUCATION AGENCY (OR OTHER ELIGIBLE APPLICANT))

I hereby certify that the accounting system established for this agency has internal controls adequate to safeguard its assets, check the accuracy and reliability of its accounting data, promote operating efficiency, and encourage compliance with prescribed management policies and the fiscal requirements in Emergency School Assistance Manual.

B. (To be used when a CPA or other duly licensed independent accountant furnishes the certification.)

I am a certified (or duly licensed) public accountant and have been engaged to examine and report on the accounting system of

_____
(NAME OF LOCAL EDUCATION AGENCY (OR OTHER ELIGIBLE APPLICANT))

I have reviewed this agency's accounting system and I hereby certify that, in my opinion, it includes internal controls adequate to safeguard its assets, check the accuracy and reliability of its accounting data, promote operating efficiency, and encourage compliance with prescribed management policies and the fiscal requirements in the Emergency School Assistance Manual.

TYPE OR PRINT NAME	TITLE	DATE
ADDRESS (NUMBER, STREET, CITY, STATE, AND ZIP CODE)	SIGNATURE	

OE FORM 5279, 7/70

(DRAFT)

Emergency School Assistance Program

INSTRUCTIONS AND APPLICATION FORM FOR SUBMITTING PROJECT PROPOSALS UNDER THE EMERGENCY SCHOOL ASSISTANCE PROGRAM OF 1970

U.S. Department of Health, Education, and Welfare, Office of Education

EMERGENCY SCHOOL ASSISTANCE PROGRAM

Introduction

The Emergency School Assistance Program is being administered by the Commissioner of Education to provide emergency assistance to desegregating school districts which are operating under a court ordered or voluntary desegregation plan, the terminal phase of which is to commence by the opening of the 1970–1971 academic year or has commenced during the 1968–1969 or 1969–1970 academic year as set forth in Title 45 Code of Federal Regulations, Part 181.

This manual is designed to provide information and guidance for the Department of Health, Education, and Welfare and for others associated in implementing the statutory provisions of the program. This is a basic reference and seeks to achieve consistency in the procedures involved. Implementation data is referenced in the Table of Contents and by annotations to applicable sections of the Regulations.

* * *

> Title VI of the Civil Rights Act of 1964 states that "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Emergency School Assistance Program

Introduction

The Emergency School Assistance Program authorizes the Commissioner of Education to administer a program of financial assistance to meet the special needs of local education agencies or other eligible applicants which are implementing or have recently implemented plans for school desegregation.

This assistance will be provided to:

1. contribute to the additional costs of new or expanded activities designed to achieve successful desegregation;
2. eliminate discrimination;
3. overcome the educational disadvantage resulting from, or increased by, past discrimination; and
4. improve the quality of education during the desegregation process.

Eligible Applicant (See Regulations, Sec. 181.3 *Eligibility*)

1. A local Education Agency which has submitted to the Office for Civil Rights of the Department of Health, Education, and Welfare:
   a. a voluntary plan, or
   b. a final order of a Federal or State court for the desegregation of schools operated by the agency.

   Such plan or order must be accompanied by an Assurance of Compliance with Title VI of the Civil Rights Act of 1964 described in 45 CFR 80.4(c) and must be acceptable under such provision.

   The terminal phase of such voluntary plan (1.a. above) or court order shall begin by the opening of the 1970–71 academic year, or shall have begun during the 1968–69 or 1969–70 academic year.
2. Any public or private organization may be eligible for a contract for the purpose of assisting one or more local education agencies described in 1. above in implementing desegregation plan(s).
3. A public or nonprofit private agency, organization, or institution (other than a local education agency) may be eligible for a grant where the Commissioner finds that it would more effectively carry out the purposes of the program.

Project Reviews

All projects will be evaluated by a qualified organization approved by the Commissioner of Education which is independent of the applicant. In a selected sample of districts receiving grants under the Emergency School Assistance Appropriation, the Department of Health, Education, and Welfare will conduct an in-depth evaluation of program effectiveness in cooperation with local school

officials. The Department will also conduct on-site reviews of project operations in order to assure that the intent of this appropriation is being followed in all projects receiving funds under the Emergency School Assistance Appropriations.

Instructions for Completing Application for Emergency School Assistance

Section I—Applicant Information

The application represents a request for funds and must be certified by an authorized official of the eligible sponsoring organization (applicant agency).

Enter the legal name of the applicant agency. The *authorizing official* is that person designated by the applicant agency to request Federal funds and is responsible for the correctness and completeness of the information contained in the application.

Section II—Application Information

"Federal funds requested" (Item 12.) should be completed after development of Activity Budget (Section IV) and negotiation conference with the Office of Education representative.

"Approving Officer" is the U.S. Commissioner of Education or his authorized representative.

Review by the State Education Agency

Arrangements should be made in advance for a representative of the Office of the Chief State School Officer to be present during the final conference. He should have the authority to review and, if appropriate, make comments for the Chief State School Officer, and to signify clearance of the project proposal by the Chief State School Officer.

Clearance by the Office of the Governor

Arrangements should be made in advance for a representative of the Office of the Governor to be present during the final conference. He should have the authority to review and, if appropriate, make comments for the Governor, and to signify clearance of the project proposal by the Governor.

Section III—Project Information

Item 28. List, by name and address, all schools included in the district for which Emergency School Assistance (ESA) is being requested.

Item 29. Assurance of Compliance—

This item relates to the eligibility of the applicant for funds under the Emergency School Assistance program. *A copy of the Desegregation Plan must be attached.*

Item 30. Evaluation by Advisory Committee—

a. Show the number of Non-Minority Race and Minority Race members who comprise the Committee.

b. List, by name, the members of each racial group. Indicate briefly:
   (1) how they were selected.
   (2) organizations they represent, and
   (3) those members who are parents of children who will be directly affected by the project(s) to be carried out under the program.

c. Attach a copy of the evaluation of the project proposal prepared by the Advisory Committee.

NOTE.—If no Advisory Committee has been established, indicate on a separate attachment titled "Advisory Committee," when this will be done, how the members will be selected, and the efforts made along this line to date.

Item 31. Worksheet Data—

NOTE.—Because of the special problems of this kind of application, it is recommended that applicants use a step-by-step approach in developing the project description. The first step is completion of Item 31. A, The Worksheet Data for Emergency School Assistance Activities.

The Worksheet Data Form is designed to assist the district in analyzing its project requirements. It provides for the identification of activities for the project by application of three criteria: problems, needs, and evaluation.

A project proposal is for the purpose of meeting certain identified problems of the district in accomplishing its desegregation effort. If not so expressed in the statement of the problems, it is also necessary to describe the needs of the children of the district.

A project will consist of one or more activities selected because they will attack the problems or meet the needs.

For the evaluation question, state each activity's performance goals. Specify them in objective terms so that an independent evaluator can assess progress against the applicant's own goals.

The Worksheet Data (Activity Resources—Current and Projected), is an additional analytical tool. When the applicant has identified the Activities for the project, this Form (Item 31.B.) is needed to record three levels of operation: (1) the past (1969–70) school year; (2) the planned (1970–71) use of resources without Emergency School Assistance funds; and (3) the plans for 1970–71 with the increment of Emergency School Assistance Funds.

In the case of Activity A, Special Community Programs, only a Yes or No entry is required. In the other activities, the number of staff or students is required. Number of staff means full-time equivalent (FTE), i.e., the time spent or it is estimated will be spent on the designated activity. Accordingly, if 10 staff members spend 50% of their time on an activity, it will be recorded as 5. Number of students means the count of students receiving the services, i.e., the number reached regardless of the amount of student time. Accordingly, if one student spends 4 hours a week in an activity, and another spends 8 hours a week in the same activity, it will be recorded as 2.

In addition, the data should be entered separately for elementary and secondary schools. This is shown by "E" for elementary and "S" for secondary. For example,

Staff:
E—2
S—3

Students:
E—24
S—27

Where an entry is not to be used, mark or type an "X" in that space, i.e., Teacher Preparation Programs will show no entry for students.

Item 32. Project Description—

After the analysis in Item 31., the applicant can now proceed to the "comprehensive statement" required in Section 181.6 of the Regulations. This statement should describe the project activities to be pursued, relating them to identified problems incident to desegregation and to the needs of the children of the district. The planned use of resources, both manpower and money (see Section IV—activity Budget), should be fully justified.

The goals of the project and the expected results should be stated as directly as possible.

Where the nature of the activity makes it difficult to assess achievements of goals, some brief description of the progress to be expected will be sufficient.

For each proposed activity, estimate the total number of minority students and non-minority students who will participate.

In addition, for each proposed activity, estimate the number of schools in the district which will be engaged in it. If known at the time of application, identify by name and address the schools which will be so engaged.

Section IV—Emergency School Assistance Activity Budget

This matrix form provides for the estimate of costs by Project Activity.

General Instructions

1. Columns 1 through 7 represent the Activities to be funded under ESA.
2. Rows A through O represent the cost categories generally allowable under ESA.
3. Enter the whole dollar amounts for each Activity requested to be funded, broken down by allowable cost categories.
4. Allowable cost categories not applicable to certain Activities are designated by blacked out boxes, indicating no entry should be made.
5. Place an "X" in each box that is not used.

Specific Instructions

1. Column 8, rows A through O. Enter the total of all entries for each allowable cost category.
2. Row P. Columns 1 through 7. Enter the total of all entries for each Activity requested to be funded.

3. Column 8, row P. Enter the sum of all other entries in column 8. Ensure that this sum equals the sum of all other entries in row P. This amount is the Direct Costs requested for the project.

4. Column 8 row Q. Enter the Indirect Costs requested for the projects. See Grants Manual for limitations and method of computation.

5. Column 8, row R. Enter the sum of Direct Costs and Indirect Costs. This is the total Federal Funds requested for the project and is the amount to be entered in Section II item 12 of the application cover sheet.

General Terms and Conditions—Emergency School Assistance Program

1. Definitions
2. Scope of the Project
3. Limitations on Costs
4. Allowable Costs
5. Accounts and Records
6. Fund Control
7. Preliminary Audit
8. Payment Procedures
9. Reports
10. Printing and Duplicating
11. Termination
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1. Definitions

As used in the grant documents relating to this award, the following terms shall have the meaning set forth below:

a. "*Commissioner*" means the U.S. Commissioner of Education.

b. "*Grantee*" means the agency, institution, or organization named in the grant as the recipient of the grant award.

c. "*Grants Officer*" means the employee of the U.S. Office of Education who has been delegated authority to execute or amend the grant document on behalf of the Government.

d. "*Project Officer*" means the employee of the U.S. Office of Education who is responsible for monitoring the project of the Grantee to assure compliance with the terms and conditions of the grant.

e. "*Project Director*" is the person responsible for directing the project of the Grantee.

f. "*Project*" is the identified activity or program approved by the Commissioner for support.

g. "*Project Period*" means the length of time specified in the Notification of Grant Award for which a project is approved.

h. "*Budget Period*" means the period of time (within or coterminous with the project period specified in the Notification of Grant Award), during which project costs may be charged against the grant. A budget period is generally twelve (12) months but may be for a different period of time, if appropriate.

i. "*Budget*" means the amount of funds approved by the Office of Education for designated services, materials, and other items.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2737)

2. Scope of the Project

The project to be carried out hereunder shall be consistent with the proposal as approved for support by the Commissioner and referred to in the Notification of Grant Award and shall be performed in accordance with this approved project proposal. No substantive changes in the program of a project shall be made unless the Grantee submits (at least thirty days prior to the effective date of the proposed change) an appropriate amendment thereto, along with a justification for the change, and this amendment is approved in writing by the Grants Officer.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

3. Limitations on Costs

a. The total costs to the Government for the performance of the grant shall not exceed the amount set forth in the Notification of Grant Award or any appropriate notification thereof. The Government shall not be obligated to reimburse the Grantee for costs incurred in excess of such amount unless and until the Grants Officer shall have notified the Grantee in writing that such amount has been increased and shall have specified in a revised Grant Award a revised amount which shall thereupon constitute the revised total cost of performance of the grant.

b. When and to the extent that the amount set forth in the grant has been increased, costs incurred by the Grantee prior to notification of such increase, in excess of the previous amount, shall be allowable to the same extent as if such costs had been incurred after notification of such increase in the amount.

c. The Grantee may transfer funds among the various cost categories in the negotiated budget to the extent necessary to assure the effectiveness of the project, except that, no transfers may be made which alter the approved project.

d. Funds for the production of motion picture films for viewing by the general public are not authorized until prior written approval is received from the Grants Officer.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

4. Allowable Costs

a. Expenditures of the Grantee may be charged to this grant only if they: (1) are incurred subsequent to the effective date of the project indicated in the Notification of Grant Award, which shall be no earlier than the date upon which the award document is signed by the Grants Officer, and (2) conform to the approved project proposal.

b. Funds obtained under this grant shall not be used for the construction of new facilities or for major structural changes in or additions to existing facilities.

c. Subject to paragraphs (a) and (b), allowability of costs incurred under this grant shall be determined in accordance with the principles and procedures set forth in the documents identified below, as amended prior to the date of the award.

(1) Exhibit X–2–65–1 of the Department of Health, Education, and Welfare Grants Administration Manual, if the Grantee is an institution of higher education; or

(2) Chapter 5–60 of the Department of Health, Education, and Welfare Grants Administration Manual, if the Grantee is a State or local Government agency; or

(3) Exhibit X–2–68–1 of the Department of Health, Education, and Welfare Grants Administration Manual, if the Grantee is a non-profit institution, as defined therein.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

d. In accordance with the policy of the Department of Health, Education, and Welfare, if the Grantee has an audited indirect cost rate that has been approved by the Division of Grants Administration Policy, this approved rate may be applied to both the Federal and non-Federal share of allowable direct costs of the project. When an indirect cost rate is applied to either the Federal or non-Federal share of project costs, no item normally included in the Grantee's indirect cost pool (such as supervision, accounting, budgeting, or maintenance) shall be listed as a direct cost of the project. Procedures for establishing Indirect Cost Rates are covered in Department of Health, Education, and Welfare brochures: OASC–1, A Guide for Educational Institutions; OASC–5, A Guide for Non-Profit Institutions; and OASC–6, A Guide for State Government Agencies.

5. Accounts and Records

a. *Accounts.*—The Grantee shall maintain accounts, records and other evidence pertaining to all costs incurred, and revenues or other applicable credits acquired under this grant. The system of accounting employed by the Grantee shall be in accordance with generally accepted accounting principles generally used by State or local agencies or institutions of higher education, or nonprofit organizations, as appropriate, and will be applied in a consistent manner so that the project expenditures can be clearly identified.

b. *Cost Sharing Records.*—The Grantee's records shall demonstrate that any contribution made to the project by the Grantee is not less, in proportion to

the charges against the grant, than the percentage specified in the grant or any subsequent revision thereof.

c. *Examination of Records.*—All records directly relating to transactions under this grant are subject to inspection and audit by the Department of Health, Education, and Welfare and by the General Accounting Office at all reasonable times during the period of retention provided for in paragraph (d) below.

d. *Disposition of Records.*—Except as provided in Paragraph (e), all pertinent records and books of accounts related to this grant in the possession of the Grantee shall be preserved by the Grantee for a period of three (3) years after the end of the budget period, if audit by or on behalf of the Department has occurred by that time; or if audit by or on behalf of the Department has not occurred by that time, the records must be retained until audit or until five (5) years following the end of the budget period, whichever is earlier.

e. *Questioned Expenditures.*—Records relating to any litigation or claim arising out of the performance of this grant, or costs and expenses of this grant to which exception has been taken as a result of inspection or audit shall be retained by the Grantee until such litigation claim, or exception has been disposed of.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

6. Fund Control

No funds shall be released to any public or private nonprofit agency, or combination thereof, unless the Grantee has submitted to the Grants Officer either—

a. a statement from an appropriate public financial officer certifying that the Grantee has established an accounting system with internal controls adequate to safeguard its assets, check the accuracy and reliability of accounting data, promote operating efficiency and encourage compliance with prescribed management policies, and that such officer shall be responsible for maintaining this accounting system; or

b. an opinion from a Certified Public Accountant or a duly licensed public accountant stating that the Grantee has established such an accounting system.

(42 U.S.C. 2835)

7. Preliminary Audit

Within three (3) months after the effective date of the grant, the Grantee will secure a preliminary audit survey of its accounting system and will submit a report thereon to the Grants Officer.

(42 U.S.C. 2835)

8. Payment Procedures

a. To obtain Federal funds, the Grantee must submit Forms 5141, Quarterly Estimated Requirements for Federal Cash, and OE–5140, with attachment 5232–A, Monthly/Quarterly Report of Disbursement of Federal Cash. Instructions for completing the forms are printed on the reverse side. The report of cash disbursements is to be submitted as a quarterly report and is due by the 10th day of the month following the end of a calendar quarter.

Inquiries regarding payment shall be addressed to the Director, Finance Division, U.S. Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202

b. Any funds remaining unobligated at the expiration of the Budget period shall within ninety (90) days of the date of expiration of the said period be refunded by check made payable to the United States Office of Education. All refunds must reference the Grant Number shown on the Notification of Grant Award.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

9. Reports

The Grantee shall submit the following reports to the Office of Education.

a. *Evaluation:*

1. Completed form furnished by HEW (See Part 181.6(J) of Regulations)—October 15
2. Interim report (See Part 181.9 of Regulations)—May 1
3. Final report (See Part 181.9 of Regulations)—Ninety (90) days after expiration of the budget period.

b. *Statistical Information* (Forms and Instructions to be submitted to grantee by DHEW):

1. The initial report will be due ninety (90) days after date of award, and should represent information applicable to the current school year.

2. The final report will be due ninety (90) days after the expiration of the budget period, and is to represent information applicable to the subsequent school year.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

10. Printing and Duplicating

All printing and duplicating authorized under this grant are subject to the limitations and restrictions contained in the current issue of the U.S. Government Printing and Binding Regulations if done for the use of the Office of Education within the meaning of those Regulations.

(U.S. Government Printing and Binding Regulations)

11. Termination

a. Grants may be terminated in whole or in part by the Government in the event the Grantee fails to carry out its approved project proposal in accordance with applicable law and the terms of this grant. No grant shall be terminated unless the Grantee has been given reasonable notice and an opportunity to show cause why such action should not be taken, and has been afforded reasonable notice and opportunity for a full and fair hearing.

b. Termination shall be effected by delivery to the Grantee of a written notification thereof, signed by the Grants Officer.

Financial obligations incurred by the Grantee prior to the effective date of the termination will be allowable to the extent they would have been allowable had the grant not been terminated. The Grantee agrees to furnish the Grants Officer within sixty (60) days of the effective date of termination an itemized accounting of funds expended, obligated, and remaining under the grant. The Grantee also agrees to refit within thirty (30) days of the receipt of a written request therefor any amounts found due.

(42 U.S.C. 2944)

12. Extension of Project Period or Budget Period

When progress under the grant is delayed and circumstances make it necessary to request an extension of either the project period or the budget period, or both, without additional funds, it is the policy of the Office of Education to consider such extensions upon written request. (Where it appears that the activity to be accomplished within the project period or the budget period, or both, will be completed within three (3) months after the expiration date, it will not be necessary to request an extension. However, if it appears that the time required will exceed three (3) months, the Grants Officer should be informed and an extension should be requested.)

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2871–2837)

13. Applicability of State and Local Laws and Institutional Procedures Regarding Expenditure of Funds

Except to the extent otherwise provided for in this document or any document incorporated herein by reference, nothing herein or therein shall be construed so as to alter the applicability to the Grantee of any State or local law, rule, regulation, or any institutional procedure which would otherwise pertain to the expenditure of funds.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

14. Copyright and Publication

a. The term "materials" as used herein means writings, sound recordings, films, pictorial reproductions, drawings or other graphic representations, computer programs, and works of any similar nature produced under this grant. The term does not include financial reports, cost analysis, and similar information incidental to grant administration.

b. It is the policy of the Office of Education that the results of activities supported by it should be utilized in the manner which would best serve the public interest. To that end, except as provided in paragraph (c), the Grantee shall not assert any rights at common law or in equity or establish any claim to statutory copyright in such materials; and all such materials shall be made freely available to the Government, the education community, and the general public.

c. Notwithstanding the provisions of paragraph (b) above, upon request of the Grantee or his authorized designee, arrangements for copyright of the materials for a limited period of time may be authorized by the Commissioner, through the Grants Officer, upon a showing satisfactory to the Office of Education that such protection will result in more effective development or dissemination of the materials and would be in the public interest.

d. With respect to any materials for which the securing of a copyright protection is authorized under paragraph (c), the Grantee hereby grants a royalty-free, nonexclusive and irrevocable license to the Government to publish, translate, reproduce, deliver, perform, use and dispose of all such materials.

e. To the extent the Grantee has the right and permission to do so, the Grantee hereby grants to the Government a royalty-free, non-exclusive and irrevocable license to use in any manner, copyrighted material not first produced in the performance of this grant but which is incorporated in the materials. The Grantee shall advise the Grants Officer of any such copyrighted material known to it not to be covered by such license.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

15. Acknowledgment and Disclaimer in Publication

Any publication or presentation resulting from or primarily related to the project being performed hereunder shall contain the following-acknowledgment:

The project presented or reported herein was performed pursuant to a Grant from the U.S. Office of Education, Department of Health, Education, and Welfare. However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Office of Education, and no official endorsement by the U.S. Office of Education should be inferred.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

16. Patent Rights

a. *Policy.*—In accordance with Department of Health, Education, and Welfare Regulations (45 CFR Subtitle A, Parts 6 and 8), all inventions made in the course of or under any Office of Education grant shall be promptly and fully reported to the Assistant Secretary (Health and Scientific Affairs), Department of Health, Education, and Welfare.

The guarantee institution and the principal investigator shall neither have nor make any commitments or obligations which conflict with the requirements of this policy.

b. *Determination.*—Determination as to ownership and disposition of invention rights, including whether a patent application shall be filed, and if so, the manner of obtaining, administering, and disposing of rights under any patent application or patent which may be issued shall be made either:

(1) by the Assistant Secretary (Health and Scientific Affairs) whose decision shall be considered as final, or

(2) where the institution has a separate formal institutional agreement with the Office of Education or the Department, by the grantee institution in accordance with such agreement.

Patent applications shall not be filed on inventions under (1) above without prior written consent of the Assistant Secretary (Health and Scientific Affairs) or his representative. Any patent application filed by the Grantee on an Invention made in the course of or under an Office of Education grant shall include the following statement in the first paragraph of the specification: "The invention described herein was made in the course of, or under, a grant from the U.S. Office of Education, Department of Health, Education, and Welfare."

c. *Reports and Other Requirements.*—A complete written disclosure of each invention in the form specified by the Assistant Secretary (Health and Scientific Affairs) shall be made by the Grantee promptly after conception or first actual reduction to practice, which ever occurs first under the grant. Upon request, the Grantee shall furnish such duly executed instruments (prepared by the Government) and such other papers as are deemed necessary to vest in the Government the rights reserved to it under this policy statement to enable the Government to apply for and prosecute any patent application, in any country, covering each invention where the Government has the right to file such application.

The Grantee shall furnish interim reports (Annual Invention Statements) prior to the continuation of any grant listing all inventions made during the budget period whether or not previously reported, or certifying that no inventions were made during the applicable period. Upon completion of the project period, the

Grantee shall furnish a final invention report listing all inventions made during performance of work on the supported project or certifying that no inventions were made during that work.

d. *Supplementary Patent Agreements.*—The Grantee shall obtain appropriate patent agreements to fulfill the requirements of this provision from all persons who perform any part of the work under the grant, except such clerical and manual labor personnel as will have no access to technical data, and except as otherwise authorized in writing by the Department.

The Grantee shall insert in each subcontract or agreement having experimental, developmental, or research work as one of its purposes, a clause making this provision applicable to the subcontractor and its employees.

e. *Definitions.*—As used in this provision, the stated terms are defined as follows for the purposes hereof:

(1) "Invention" or "invention or discovery" includes any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States.

(2) "Made" when used in relation to any invention or discovery means the conception or first actual reduction to practice of such invention in the course of the grant,

f. *Inventions Resulting from Grants Made in Support of Research by Federal Employees.*—Inventions resulting from grants made in support of research by Federal employees shall be reported simultaneously to the Assistant Secretary (Health and Scientific Affairs) pursuant to terms of the grant and to the employing agency under the terms of Executive Order 10096, as amended.

(45 C.F.R. Parts 6 and 8)

17. Travel

Travel allowances shall be paid in accordance with applicable State and local laws and regulations and grantee policies. If none of these are applicable, travel shall be done in accordance with Federal Government regulations. No foreign travel is authorized under the grant unless prior approval is received from the Grant Officer. Travel between the United States and Guam, American Samoa, Puerto Rico, the U.S. Virgin Islands, the Canal Zone and Canada is *not* considered foreign travel.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c—2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

18. Equipment

Title to, and accountability for, equipment shall be determined in accordance with Chapter I–410, Management of Equipment and Supplies Acquired Under Project Grants, of the Department of Health, Education, and Welfare Grants Administration Manual.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c—2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

19. Service Contracts

The Grantee may enter into contracts or agreements (to the extent permitted by State and local law) for the provision of part of the services under this grant by other appropriate public or private agencies or institutions. Such contract or agreement shall incorporate these grant terms and all other rules and regulations applicable to the program, shall describe the services to be provided by the agency or institution, and shall contain provisions assuring that the Grantee will retain supervision and administrative control over the provision of services under the contract. Services to be provided by contract pursuant to this section shall be specified in the project proposal or in an amendment thereto, and the proposed contract shall be submitted to the Grants Officer and be approved by him in writing.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

20. Health and Safety Standards

Whenever the Grantee, acting under the terms of the grant, shall rent, lease, purchase, or otherwise obtain classroom facilities (or any other facilities) which will be used by students and faculty, the Grantee shall comply with all health and safety regulations and laws applicable to similar facilities being used in that locality for such purpose.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

21. Salary Limitations and Reporting Requirements

a. Compensation paid from Federal or matching non-Federal funds to persons employed in carrying out the project shall be subject to the following limitations:

(1) In no case shall the rate of compensation be less than the Federal minimum wage rate, which is $1.60 per hour except as otherwise provided in Section 6(a)(1) of the Fair Labor Standards Act of 1938.

(2) Except as provided in paragraph (1) the rate of compensation shall not exceed the average rate paid in the community where the project is carried out to persons providing substantially comparable services, or the average rate paid to such persons in the area of the employee's immediately preceding employment, whichever is higher.

(3) In no case shall the rate of compensation exceed $15,000 per year, unless the Grantee obtains a specific exception from this requirement from the Grants Officer. A Grantee applying for such an exception shall submit a written justification together with information as to salary levels for persons with comparable skills or holding comparable positions in the same community (or in the nearest community where such persons are employed), and, if relevant, similar information for the last community in which a specific job applicant or incumbent was employed.

(4) Unless approved by the Grants Officer, the rate of compensation of any person being paid at a rate in excess of $6,000 per year shall not exceed by more than twenty percent (20%) that person's rate of compensation in his immediate preceding employment.

b. The Grantee shall maintain records adequate to demonstrate compliance with the limitations in (a). The Grantee shall also report to the Office of Education on or before July 15 of each year the names of all employees who, as of June 30 of that year, were receiving a salary of $10,000 or more per year, together with the amount of compensation paid to each such person from grant funds or matching funds since July 1 of the preceding year.

(42 U.S.C. 2836(2) and 42 U.S.C. 2951)

22. Compensation

If a staff member is involved simultaneously in two or more projects supported by funds from the Federal Government, he may not be compensated for more than a total of one-hundred percent (100%) time from such Government funds for all projects during any given period of time.

(20 U.S.C. 1119–1119a, 20 U.S.C. 331–332b, 42 U.S.C. 2000c–2000c–9, 20 U.S.C. 887, 20 U.S.C. 1222, and 42 U.S.C. 2781–2837)

23. Prohibition of Political Activities

No project shall be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of the project with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election from public or party office, (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (3) any voter registration activity.

(42 U.S.C. 2943(L))

24. Restrictions on Certain Unlawful Activities

No individual employed or assigned by the Grantee shall, pursuant to or during the performance of services rendered in connection with any activity conducted or assisted under this Grant, plan, initiate, participate in, or otherwise aid or assist in the conduct of any unlawful demonstration, rioting, or civil disturbance.

(42 U.S.C. 2963)

25. Labor Standards

To the extent that grant funds will be used for alteration and repair (including painting and decorating) of facilities, the Grantee shall furnish the Grants Officer with the following:

a description of the alteration or repair work and the estimated cost of the work to be performed at the site;

the proposed advertising and bid opening dates for the work;

the city county, and State at which the work will be performed; and the name and address of the person to whom the necessary wage determination and labor standards provisions are to be sent for inclusion in contracts; not later than six (6) weeks prior to the advertisement for bids for the alteration or repair work to be performed. The Grantee shall also include or have included in all such alterations or repairs the wage determination and labor standards provisions that are provided and required by the Secretary of Labor under 29 CFR Parts 3 and 5.

(42 U.S.C. 2947)

26. Equal Employment Opportunity

With respect to repair and minor remodeling, the Grantee shall comply with and provide for Contractor and Subcontractor compliance with the requirements of Executive Order 11246 as implemented by 41 CFR Part 60, The terms required by Executive Order 11246 will be included in any contract for construction work, or modification thereof, as defined in said Executive Order.

(Executive Order 11246)

Handbook for Public and Private Non-Profit Organizations, Emergency School Assistance Program

Introduction

The Emergency School Assistance Program is designed to provide financial assistance for Local Educational Agencies (the local school system, hereafter called LEA's) and to public and private non-profit organizations other than LEA's to achieve and maintain a desegregated school system. Eligibility criteria limit projects to areas where the LEA is beginning, or has begun within the last two years, the terminal phase of an approved desegregation plan. Therefore, projects must support the implementation of the desegregation plan. The funds are to be used to meet the special needs of students, teachers, school adninistrators, and the community-at-large during the process of school desegregation.

The total amount available to the 1229 LEA's eligible as of September 11, 1970, under the Emergency School Assistance Program is 75 million dollars. Ninety per cent of this amount, or 67.5 million dollars, is for grants to LEA's. The remaining ten per cent, or 7.5 million dollars, is for grants to public and private non-profit organizations other than the LEA. Organizations such as community groups, colleges, and universities, and other local, regional, or national organizations would be eligible. This handbook is for the use of public and private non-profit organizations (hereafter called "non-LEA's") applying for the 7.5 million dollars set aside under the Emergency School Assistance Program.

Funds are provided for non-LEA's both in recognition of the important role these organizations play in the success or failure of the desegregation effort, and because to be fully effective, the desegregation process requires community support and participation. Further, it is recognized that in some communities, organizations other than the LEA may be in a better position to carry out some types of activities essential to a successful desegregation effort.

Eligibility

In order to be eligible for funds, the applicant must

(1) Be a public or private non-profit organization, and

(2) The project must serve only areas where the LEA has either:

(a) Submitted an acceptable plan to the Department of Health, Education, and Welfare, and which began the terminal phase in school year 1968–69, 1969–70, or 1970–71, or

(b) Has received a final court order to desegregate from a State or Federal court, and which began the terminal phase in school year 1968–69, 1969–70, or 1970–71.

A list of these eligible LEA's is included in this information package. Additional lists are available from the Office of Equal Educational Opportunity, Office of Education, at your Regional HEW Office, or from Washington, D.C.

The fact that an LEA has not subscribed to the assurances required by ESAP regulations (181.6(a)), does not, in and of itself, disqualify another public or private non-profit agency from receiving funds under the program to aid the desegregation process in the school district of the LEA. The public or private non-profit agency may not, however, serve as a conduit for funds to the disqualified LEA. In other

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words, the project to be conducted must be genuinely that of the public or private non-profit agency, and not that of the LEA. In order to determine whether the public or private non-profit agency is serving as a conduit for the disqualified LEA, it will be necessary to examine the proposed project in the context of services that would normally be provided by the LEA.

Program Priorities

Since there are many more organizations than can be funded under the 7.5 million dollars, some funding priorities have been developed and are described below:

(1) Priority will be given to those projects which are either inter-racial or inter-cultural and have a clear and direct relationship to successful desegregation. As is clearly described in the regulations, the thrust of this program, and of the program for LEA's, is to foster quality desegregated education.

(2) Priority consideration will be given to proposals which demonstrate the unique capabilities of community groups to assist in the desegregation effort, and which can provide models for other community groups which seek to make a contribution to desegregation efforts.

(3) Priority consideration will be given proposals from organizations which have demonstrated their ability to help achieve or maintain a desegregated school system, or have experience in improving the quality of education during the desegregation process. New Organizations will be funded where there are individuals who have demonstrated experience and competence, or where the innovative character of the proposal requires the formation of a new organization.

Authorized Activities

Two types of projects will be funded: (1) Type A—a group of 20 to 30 model projects, and (2) Type B—a larger number of smaller projects typically relating to a single LEA's desegregation plan, or for projects operating on a relatively inexpensive scale.

Type A Projects

Model projects should either (1) demonstrate the value of a particular service or technique in achieving school desegregation, or (2) apply techniques developed in previous desegregation efforts, thereby testing their value in more than one situation, or (3) coordinate existing efforts and provide technical assistance to communities experiencing desegregation. These Type A projects would ordinarily serve more than one LEA. If they relate only to one LEA's desegregation plan, they should be of high innovative potential and especially good design. Regional or multi-district groups would have the advantage of being able to demonstrate the value of a particular technique or service in more than one LEA.

Type A projects should be sufficiently focussed upon clear and limited objectives to enable in-depth evaluation as models, rather than seeking to accomplish a broad range of generally defined goals. Potential applicants should recognize that Federal officials will maintain close relationships with the projects, so that lessons can be drawn from the experience. Technical assistance from a specially selected group of consultants and institutions will also be available.

Type B

Type B projects will ordinarily operate within a single LEA, or would involve community relations activities of a relatively inexpensive nature. In designing the project, organizations should set goals and objectives that can be realized. Mechanisms for measuring progress must be established so that those directing the project, and those served by the project have a sense of what has been accomplished. Broad generalizations of direction and purpose lead to confusion and misunderstanding. Organizations should design the project so that it can be evaluated objectively both by the target community and by Federal officials.

Project Activities—Type A and Type B

Project activities must support the implementation of the desegregation process of the LEA, and must contribute to a lasting and educationally sound desegregated school system. Generally, projects operated by non-LEA's will be in program areas not covered by the LEA's operations or scope of direct responsibility, rather than duplicating the work of the schools.

The kinds of project activities which might be funded are described below.

(1) *Community Relations and Information Projects.*—Under this broad heading, a variety of activities operating in support of desegregation plans could be under-

taken. Such activities could include, as specified in the regulations, community information programs, school-home visitation programs, and special parent programs. Publications, speakers' bureaus, films, media presentations, bilingual presentations and materials, and other information activities could be designed in conjunction with local educational agencies as a means of disseminating information which would increase mutual understanding on the part of those participating in or affected by the implementation of a desegregation plan.

(2) *Compensatory/Remedial.*—Remedial programs outside the school setting with a strong community base, or with the assistance of colleges in the region, will provide essential support for student achievement within the newly desegregated classroom. These programs should be operated on an inter-racial basis. Most typically, perhaps, these projects would include after-school tutorial programs, some of which may operate on a bi-lingual basis for students learning English as a second language. Secondary students and students of colleges and universities in or near the desegregating districts could participate in such programs.

(3) *Parent Involvement.*—The value of involving parents of students in school-related activities to reinforce student achievement has been demonstrated in pre-school settings. The major thrust of projects under this activity should be to get minority and non-minority parents cooperating to improve the quality of their children's education. Expansion of existing parents' organizations or establishment of new groups are allowable under this activity.

(4) *Student and Youth Projects.*—A special effort will be made, in line with the regulations requirement for student advisory committees, to solicit and provide technical assistance for programs operated by students and youth. Projects could be either curricular or extra-curricular in nature. Such projects could be aimed at conflict resolution, or could be designed to develop and implement acceptable student codes. In addition, special efforts should be made throughout the program to involve students, as the most directly affected participants in the planning and operating of all types of allowable projects.

(5) *Inter-racial education.*—For many students, the school and home environments are predominantly racially and culturally isolated. For these students, special inter-racial or inter-cultural programs should be developed. These programs would not fall under other project categories, such as compensatory or student projects. Such courses would typically be taught outside school hours under the auspices of community groups. They may involve special interest courses, for example, in the arts or academic courses not offered to these particular students in their schools, such as special science activities. The emphasis should be on innovative activities designed to promote inter-racial and intercultural cooperation and understanding.

(6) *Training and Technical Assistance.*—Some projects might usefully focus primarily upon training community groups to contribute effectively to desegregation planning. Such training activities could include seminars on the issues involved in desegregation, conferences featuring speakers familiar with both educational and community problems, or dissemination of information on innovative approaches to desegregation used in other communities. Technical assistance activities may be developed to respond to short-term needs of individual districts or community groups, including crisis intervention, rumor control activities, and curriculum and textbook review.

(7) *Activities Linked to Comprehensive Educational Planning.*—The regulations make clear that special comprehensive planning designed to assist in implementing desegregation planning is an allowable activity. While educational planning is primarily the function of the LEA, other agencies such as community action agencies, councils of government, or city demonstration agencies are also involved in educational planning or in planning for programs such as housing or relocation for areas affected by the desegregation plan. Additional administrative personnel who would concentrate on desegregation problems, or programs operated by these agencies in support of desegregation would be allowable activities. The main objective of such planning efforts would be to link more closely the on-going educational planning and program activities of these non-LEA agencies to the desegregation activities of the LEA.

While many community projects will need information about the LEA's desegregation plan and implementation efforts in order to design a successful project, the Office of Education will not fund proposals which monitor LEA performance in carrying out the desegregation plan. Several agencies including the Office of Civil Rights, the Office of Equal Educational Opportunity and the Office of Program Planning and Evaluation will have the responsibility for monitoring and evaluating LEA performance.

Relationship to the LEA

Projects will be much more effective in furthering the desegregation process if there is close cooperation and a two-way flow of information between the LEA and the community organization. Lack of cooperation may, in fact, hamper desegregation. For example, a community group funded for a parent involvement project will need basic information about class distribution and size, extracurricular activities, and teacher training, so that parents can participate as fruitfully as possible in school activities. Similarly, the community organization needs to be aware of LEA activities, so that projects will expand the effectiveness of the LEA's implementation of the desegregation process, rather than proposing to operate duplicate program activities. Finally, since the LEA will have an opportunity to comment on the non-LEA proposal, it is to the advantage of the applicant to seek cooperation before official LEA comment is solicited from Washington.

Therefore, applicants should consult with the LEA regarding the development of the program and its relationship to the implementation of the desegregation plan. They should seek to review the LEA's desegregation plan with the LEA staff, and should arrange for periodic discussions on the LEA's progress in desegregating. In turn, the community group should keep the LEA apprised of the project's activities and progress. The Office of Education will request LEA's to cooperate in this process.

The application should include a description of the relationship between the applicant and the LEA, including whether the LEA has agreed to consultation, and whether the LEA has permitted the applicant to review the desegregation plan.

Review by the LEA

The Office of Education will provide the LEA an opportunity to comment on the project proposal, and on the consultation process with the non-LEA. Where a project serves a substantial number of LEA's, it will not be possible to solicit comments from each LEA. In such instances, the comments of the state educational agency (agencies) will serve this purpose.

In some cases, it will be impossible for the project to be implemented without the close cooperation of the LEA. Activities requiring the use of school property, or the presence of school personnel or students during school hours, must of practical necessity be endorsed by the LEA(s).

Review by the State Educational Agency

Most state educational agencies will also be providing services to LEA's which are desegregating. In order to insure cooperation and the coordination of these activities, state agency officials need to be aware of the project activities. Therefore, the Office of Education will provide the state educational agency an opportunity to review and comment on the project application. Applicants are encouraged, however, to inform state agency officials of their interest and where appropriate to involve them in the development of the application.

Review by the Office of the Governor

Under the Office of Economic Opportunity's authorizing legislation (section 242) used in the Emergency School Assistance Program, the Governors' offices must be afforded an opportunity to review proposals. This clearance will be the responsibility of the Office of Education. (It should be noted that this review does not apply to institutions of higher education in existence before August 20, 1964.)

Community Involvement

The success or failure of the desegregation plan is an extremely important event in the life of any community. If the project is to help in achieving and maintaining a desegregated school system, it is important that members of the target community have an opportunity to participate in and comment on the development of the program. This is particularly true if the program is an innovative one, if the techniques or services will be unfamiliar to the target population, or if the project seeks to expand community awareness of a desegregation plan. Where other activities have been undertaken by non-LEA's in helping to achieve school desegregation, an applicant should seek to develop a program which is consistent with and does not duplicate ongoing community activities.

ADVISORY COMMITTEE

Each project funded should have an advisory committee or board which includes representatives of the persons who are to be served by the project, and which has representatives of minority and non-minority groups. Secondary students should be represented on all such committees. (Students serving on both committees must be selected by the secondary school students served by the project.) In some cases, the applicant will need to organize such a committee. In others, existing LEA advisory committees will fulfill this function. Where a bi-racial advisory committee exists but is not the non-LEA advisory group, a communication link between the two should be developed. Each project application must include either (1) a list of the persons on the advisory committee and the means by which they were selected or (2) plans for organizing such a committee within 30 days of the receipt of the grant award.

PUBLIC DISCLOSURE

The grantee is responsible for assuring that the community has an opportunity to participate in the development of the project. Therefore, ESAP regulations require all grantees (LEA's and non-LEA's) to:

(1) Make available within 30 days of receipt of the grant the details of the project for publication in a newspaper of general circulation (bilingually where appropriate).

(2) Make information about the project available to the general public.

The chief elected official of the city or town affected by the project will also be notified by the Office of Education when the grant is approved.

SUPPLEMENTS:

EMERGENCY SCHOOL ASSISTANCE PROGRAM

Guidelines for Student Groups [1]

Introduction

The Emergency School Assistance Program has, as one of its major aims, provisions for the funding of student initiated and operated projects that could materially assist schools and communities in the overall desegregation effort.

Schools, traditionally, have not turned to young people for answers to their problems. Nor have they openly encouraged students to become concerned and active in educational matters. Many forms of student participation have been weak and ineffective, owing to a lack of legitimacy, responsibility, or real power. Student governments, for example, are often considered by students as mere "popularity" contests or as shadow governments of the administration. The result in many cases is distrust and even rejection of what are designed as student channels of communication and power.

The issue is even more critical in newly desegregated schools. Here the attitudes and perspectives expressed by many young people reflect not only student powerlessness but also racial tensions and fears. These tensions and fears can cause considerable frustration, isolation, and disillusionment, particularly among minority students, and can render totally unworkable the normal channels of student participation. Too often parental attitudes and prejudices reinforce these tensions, creating additional pressures which serve to maintain rather than break down racial barriers.

Racial conflict and student powerlessness, then, are the twin realities which make it doubly difficult for student groups to assume a constructive role in bringing about successful desegregation. Yet given some new avenues of responsibility, students have a tremendous potential for producing projects that will ease racial tensions and reinforce desegregation objectives.

Young people in general are more open to change than their elders, and they are better able to adapt specifically to desegregation because their prejudices, where they exist, are less firmly entrenched. Students, too, have come to realize that they have a definite role to play in society and are willing to accept added responsibilities. Finally, students have firm ideas about what is needed to facilitate desegregation because it is they who feel most directly its daily effects.

With increased discussion of student responsibilities and the potential for constructive student participation in educational reform, there is an overwhelming

[1] These guidelines are designed as a special student supplement to the Emergency School Assistance Program *Handbook for Public and Private Non-Profit Organizations* other than the local education agency. They should in no way be considered a substitute for the *Handbook*.

need to provide new opportunities for students to become engaged in helping school administrators resolve some of the problems the schools now face. It is this need which the student aspect of the Emergency School Assistance Program is designed to fill, with a specific focus on the special problems of newly desegregated schools.

Major Objectives

Students—regardless of race—see as their common concern the need for an education that is responsive to their own particular needs. This critical objective is far more important in the long run than the specific concerns that relate to desegregation and the problems that are inherent in an atmosphere of racial mistrust and tension. In the short run, however, these problems can strangle educational development, and it is here that the Emergency School Assistance Program has its most direct application.

Youth projects funded under the Program will thus have two closely interrelated objectives. The overriding goal will be the improvement of educational services for youth, for there is mutual agreement by all groups that if education were honestly geared to students' needs, the question of racial differences would take on a very small importance, and potential racial hostilities would resolve themselves in the classroom and in the community.

Bi- or Multi-Racial Action

The overall emphasis, then, of the student and youth projects in this new desegregation effort is to fund a broad range of student initiated and operated programs which attempt, with a bi- or multi-racial composition, to improve existing school programs and/or policies or to create new activities that are not now being made available. These activities could include community relations and information, parent involvement, compensatory reading projects, inter-racial communications, and inter-racial drama groups, art and cultural programs, and athletic and recreational activities, to name a few. More specific types of programs and activities are discussed later.

Uni-Racial Action

Even though the basic intent of the Program is to provide inter-racial opportunities for students to improve educational services and policies, it is recognized that there are circumstances justifying the funding of programs with a particular ethnic target group. This is especially true in relation to compensatory education programs. Young high school Blacks, Chicanos, and Indian youth need to develop new activities that are designed for their communities, especially activities that will help younger students of their own race.

While it is understandable that these kinds of projects have top priority among many youth groups in segregated communities, every attempt should be made to find ways of reaching out and including other ethnic representation in the project. In addition, the project itself must at least lead toward some form of improved inter-racial understanding, cooperation, or educational equality.

Advisory Committees

One means of involving other segments of the community and other racial groups in student projects is through advisory committees. As with the Local Education Agency (LEA) and other community group projects funded under the Emergency School Assistance Program each student group project must make provisions for an advisory committee. For activities with a uniquely student focus, the advisory committee may be composed entirely of students. For activities which involve or are directed to the community at large, the committee must include representatives of the adult community served.

Advisory committees for student projects can be an important link to the school system and to the general community, as well as a potential resource in securing cooperation and support from outside the student community. As such, student groups should make an effort to enlist teachers, school officials, parents, and other community adults as members or supporters of their project's advisory committee.

Advisory committees can be especially helpful in promoting inter-racial understanding of, and support for, a project's goals and activities. For projects serving an inter-racial group, the committee should probably have equal numbers of minority and non-minority members and must at a minimum reflect the same racial balance as the group to be served. For uni-racial projects, the advisory committee must either have some degree of inter-racial mix or at a minimum be open to inter-racial membership. In cases where it is impossible to secure inter-

racial membership on the advisory committee at the outset of a uni-racial project, student groups must indicate what steps have been and will be taken to communicate to other racial groups the importance of the project and to enlist bi- or multi-racial membership.

In many cases, it may be possible for a student group to meet the advisory committee requirements by using an existing student organization or an advisory committee established pursuant to a separate LEA or community group project. It should be noted that community groups are required to have student representation on their advisory committee and that LEA's are required to establish separate Student Advisory Committees in each school affected by their project which has minority and nonminority students.

If existing advisory committees do not meet the necessary requirements, or if none exists, student groups will have to establish their own committee. In the former case, student groups should at a minimum seek to develop an ongoing liaison with such other committees to avoid duplicative activities and to facilitate communication about desegregation efforts in the community as a whole.

In submitting applications student groups will be required to include either (1) a list of the persons on the advisory committee and the method by which they were selected or (2) plans for organizing such a committee within 30 days of the receipt of the grant award. At this time the relationships between this advisory committee and any other advisory committees in the community should be indicated.

Types of Project Activities

Types of activities sponsored by student and youth groups will fall broadly into two areas—in-school and out-of-school programs. The lists below indicate the types of programs that could substantially assist in the overall improvement of educational services to youth, both inside and outside the school, while at the same time facilitating desegregation objectives. The project examples are all drawn from existing or proposed activities recommended by students themselves and are designed to suggest a range of allowable activities. This list of potential activities should not, by any means, be considered the only ones open for student funding. On the contrary, proposed student projects have a better chance of being funded if they attempt to meet a specific, well identified local need.

A. *In-School Projects.*—All in-school projects which rely to some degree on the use of school facilities or official school personnel, and/or which operate during school hours, must have the approval of local school authorities. Student groups planning such projects, therefore, must clear their proposal with the school(s) involved before submission. In such instances, local advisory committees could be very helpful. The following are some examples of potential in-school projects:

1. Activities that examine existing school policies and procedures, such as dress codes, school colors and songs, disciplinary regulations and codes, etc. with the aim of helping school authorities re-evaluate and re-write those policies and procedures so as to be more reflective of student attitudes and concerns.

2. Activities designed to deal with crises arising out of desegregation conflicts, such as rumor control centers, inter-racial grievance committees, appeal procedures, and student or community hallway patrols as an alternative to police in the schools.

3. Activities that examine existing forms of student government and help school authorities and student government representatives re-evaluate and re-design more responsive forms of student governance.

4. Activities that examine and re-evaluate the existing school curriculum, including supportive materials such as textbooks, films, lectures, and field trips, with the aim of helping administrators and teachers re-write or re-design the curriculum so that it is more responsive to the needs of youth.

5. Activities that re-evaluate existing summer opportunities for youth with the aim of helping school authorities provide new summer programs that are relevant to youth needs and wishes, including projects with a focus on community relations and cultural enrichment as well as those geared primarily to youth employment opportunities.

6. Activities that examine and re-evaluate existing information sources for youth on health, recreation, employment, etc. with the aim of helping school authorities provide up-to-date information for students.

7. Activities that promote new kinds of learning experiences within the formal school setting, such as work-study, community classrooms, student lectures, inter-school seminars or debates, etc.

8. Activities that examine the broad question of student rights and promote and encourage acceptance of new concepts of student rights and responsibilities among school administrators and teachers.

9. Projects that aim at discovering new, student-initiated ideas in the area of drug education and promote bi- or multi-racial attacks on the problem of drug abuse in the schools.

10. Activities that re-evaluate current grading and scheduling systems in the school with the aim of helping school authorities re-examine and re-design those systems.

11. Activities that involve secondary students as tutors for younger students, using regular homework or special instructional materials, during school hours or in classroom after school.

12. Activities that entail using inter-racial student teams to assist younger Spanish-speaking students with proper English usage and pronunciation.

13. Activities that examine existing extra-curricular programs, such as clubs, athletics, and student publications, with the aim of working with school authorities and students to make those programs more relevant to student needs.

14. Activities that research student attitudes, values, and opinions so that actions can be taken as a result of the findings which will improve programs and services.

15. Activities that promote forums, conferences, or expanded student assemblies with outside speakers, as well as informal discussions between students and community leaders, so that the student body will be better informed about existing community attitudes and problems.

16. Activities that promote cultural events for students within the school.

17. Activities that promote the inclusion of ethnic studies as a regular part of the school curriculum.

B. *Out-of-School Projects.*—Out-of-school projects provide opportunities for students who feel that school administrators are not sympathetic toward student initiated and operated programs within the school setting, or who feel that they can have a greater impact on improving educational services through extra-curricular or non-school projects. Although formal endorsement by school authorities is not required if school hours, facilities, or official personnel are not involved, student groups should nonetheless make an effort to consult with, and secure the cooperation of, local school officials and school administrators. Here again an existing advisory committee could be a useful resource. The following suggests the range of out-of-school projects which could be sponsored:

1. New alternative schools offering, during after school hours, evenings, and weekends, the types of activities and instruction which young people feel are relevant to their needs.

2. Special follow-up activities in the communities geared to handling crisis situations arising out of desegregation conflicts, such as expanded rumor control operations, community discussions, etc.

3. Special activities geared toward school drop-outs from newly desegregated schools.

4. Activities geared toward an inter-racial approach to drug education or an inter-racial attack on drug abuse.

5. Special programs relating to social and recreational needs of young people, particularly in an inter-racial setting.

6. Activities that provide tutorial services to younger students, whether on regular homework or on basic skills such as reading, mathematics, or English language.

7. Programs that provide ethnic studies for minority youth or which educate students about ethnic cultures other than their own.

8. Programs that relate to juvenile delinquency problems in the community, particularly those that may have arisen as a result of desegregation conflicts.

9. Activities that promote community discussions and examine community problems with local experts.

10. Projects that bring together sympathetic teachers and students to work on common problems after school hours.

11. Projects that sponsor cultural events, such as plays, art exhibits, or concerts, particularly those which promote understanding of an ethnic cultural heritage.

12. Activities that deal with parental attitudes and fears and work toward racial harmony among community adults.

13. Activities designed to educate parents about their proper role and responsibilities in the school system, particularly concerning activities which require parental action or consent.

14. Programs that initiate new kinds of vocational training opportunities within the community, especially in conjunction with a work-study program.

15. Activities that supplement regular school counseling services, whether for vocational or college-bound opportunities.

16. Activities that assist young people in getting part-time employment during the school year or summer employment, particularly with regard to minority youth hiring by non-minority employers.

17. Activities that establish and operate speakers bureaus on desegregation issues for one or more schools or school districts.

18. Activities that have the general aim of discovering and fostering specific ways in which different ethnic groups can work together.

Funding and Budgetary Considerations

Student and youth groups will use the same application form and procedures as other community groups and should read carefully the *Handbook* for community groups to determine eligibility, application procedures, and submission requirements.

To receive the 10% set-aside funds under the Emergency School Assistance Program, a grantee must be either a public or private non-profit organization. For student groups, this means that they must either (1) have a sponsor who is eligible to receive Federal funds, or (2) be legally eligible themselves as a non-profit private organization according to their respective State laws. For legal and administrative reasons, student groups are strongly encouraged to secure a local sponsor. Likely possibilities are churches, colleges and universities, community action agencies, city demonstration agencies, citizen associations, or other community groups.

Most student group projects will be local rather than regional or Statewide in nature and will fall within the roughly $2.5 million set aside for Type B local projects, as described in the *Handbook*. This does not foreclose the possibility, however, of a statewide or multi-district student group project being funded or of a highly innovative student proposal being funded as a Type A model project.

It is hoped that from 25 to 50 student projects will be funded, and in order to maximize the total number available for funding, it is expected that student project budgets will be able to operate within a $3,000 to $7,000 range for each discrete project activity. Like other community groups, student groups are cautioned against making the aims of the project so broad or the activities so numerous that in a post-project evaluation it would be difficult to isolate the reasons for successes or failures.

It is a demonstrated fact that students can take a small amount of money and use their energy and initiative to turn it into a highly innovative and successful program. Student groups will be allowed the same type of expenses as any other community group, but they should make every effort to secure donated space, volunteer time, use of a sponsor's accountant or legal services, shared materials and transportation, and the like. In addition to holding down budget costs, these forms of in-kind local contributions increase community involvement in and support of the project. Moreover, they allow a significantly larger number of student projects to be funded, with the benefit of many more models of student involvement in the desegregation process.

Guidelines for Parent Involvement Projects

Introduction

Parents are vitally concerned with helping their children to get a quality education. The formation of Parent-Teachers Associations and similar organizations throughout the country has been the principle mechanism by which parents have sought participation in and support of the public schools. These organizations can and have contributed to improving the schools, to developing good community-school relationships, to helping parents make the home environment a better place for learning, and to enabling parents to become effective advocates for their children. Both parents and the school benefit from this process.

In segregated school systems, however, a different picture emerges. Parents who are poor or who are members of minority groups are frequently discouraged from participating in school activities. They see the schools as alien institutions over which they have no influence. As a result, they see no way to protect and support their childern's interests. These feelings are aggravated where a language barrier exists. In addition, the poor, minority and non-minority, face additional obstacles such as lack of transportation to meetings, lack of child care facilities, and self-consciousness because of poor clothing or little education. Faced with this situation, few parents are able to become involved.

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With the desegregation of the schools, many of the existing organizations have tended to dissolve because minority and non-minority parents are apprehensive about an interracial experience, and/or because "white flight" of the middle and upper classes is beginning to take place. New efforts to form organizations which include both minority and non-minority parents can help to bring about greater racial understanding within the community, and help to establish a basis for a desegregated public school system. While special efforts will be needed to reach the poor, the experience of Head Start and other programs, both Federal and community-based, indicate that when obstacles such as child care and transportation are removed, parents do participate.

Purpose

The purpose of projects funded under this category is to develop and/or encourage participation by minority and non-minority parents, particularly the poor, in school activities. Projects should emphasize bringing minority and non-minority parents together around the common cause of bettering their children's educational experience. The type of project activities that would be most effective will depend on the community involved, the degree of participation minority and non-minority parents already have in the schools, the attitude of the LEA toward this participation, whether or not a language barrier exists and other factors.

Program Requirements

All projects funded under the Emergency School Assistance Program must comply with the program requirements discussed in the *Handbook for Public and Private Non-profit Organizations*. The material contained in these guidelines is intended to supplement the *Handbook*. Applicants should read the Handbook carefully before submitting a proposal to insure compliance with these requirements. The items described below are of special importance to parent involvement projects.

Advisory Committees (see section on "Advisory Committees" in the *Handbook:* The requirement that the advisory committee be representative of the people to be served by the projects, means that advisory committees under the category must have a majority of parents. Parent involvement projects are also encouraged to have representatives of the schools on these committees, where possible, so that lines of communication with the school system can be established.

Relationship to the LEA (see section on "Relationship to the LEA" in *Handbook):* The degree of cooperation that exists between the applicant and the LEA will influence the kind of project that can be undertaken. Applicants are encouraged to seek such cooperation. This is particularly important where projects are seeking to develop relationships between parents and the school system.

Activities

The activities described below suggest some kind of projects that organizations may wish to undertake. They should not be considered rigid suggestions. Applicants should identify the need in their own community and develop the type of project that will meet that need. It is assumed that applicants, in designing their project, will propose methods of overcoming the obstacles to participation, such as transportation and child care.

(1) Helping parents to understand how the school system works, how decisions are made, and how they can participate in this process to assist desegregation.

(2) Working with parents and teachers to promote better understanding of the school environment and the home environment. Activities could involve parents visiting the classroom, or home visits by teachers. Bilingual and/or neighborhood aides may facilitate this process, particula.. _ where a language barrier exists.

(3) At the pre-school and elementary school level, working with parents, teachers and school administrators to:

(a) Develop or change dress codes in order to have them reflect standards acceptable in that community, and within the reach of poor people.

(b) Develop mechanisms for dealing with disciplinary problems that are acceptable to parents, teachers, and administrators.

(c) Revise curriculum, and select textbooks that have current information and that reflect the contribution of minority groups.

(d) Develop school food programs that take advantage of all available Federal and State food programs and that reflect the ethnic values of the community.

(e) Provide diagnostic and treatment programs for hearing, speech and vision defects that affect the ability to learn.

(f) Develop a policy regarding parental access to the school building and time convenient to parents.

(g) Develop a policy regarding the presence of police in the schools.

(4) At the junior high and secondary school level, working with parents, teachers, students, and school administrators to:

(a) Develop or change dress codes so that they are acceptable to all.

(b) Handle disciplinary problems in a way acceptable to all.

(c) Revise curriculum and select textbooks that reflect the contribution of minority groups, and that provide current and relevant material.

(d) Provide food programs, taking advantage of all Federal and State food programs, that meet the needs of low-income children and reflect the ethnic values of the community.

(e) Develop extra-curricular and social activities for an interracial student body.

(f) Develop a policy regarding parental access to the schools at a time convenient for parents.

(g) Develop a policy regarding the presence of police in the schools.

(h) Provide diagnostic and treatment services for hearing, speech and vision defects that affect the ability to learn.

(i) Review and evaluate the effectiveness of existing guidance and counseling services to determine if they help minority and low income students take full advantage of their potential, including especially, encouraging higher education and providing information on scholarship and loan programs.

(j) Determine if the guidelines and counseling services provided to students entering the labor market are effective in assisting them to function successfully in the "world of work".

(5) Work with school administrators and others to develop compensatory and remedial programs for children victimized by past discrimination.

(6) Developing programs for parents on nutrition, child care, and other topics of interest to parents.

(7) Provide training for parents who are new members of school boards or advisory committees, so that they can make a more effective contribution.

(8) Develop programs of bilingual education for parents so that parents can communicate effectively with each other and with school officials.

(9) Programs or activities that will improve understanding between parents, such as ethnic studies or joint efforts on a community problem of interest to both.

Emergency School Assistance Act

Guidelines for Compensatory/Remedial Projects

Compensatory/Remedial programs can be of great help in redressing educational imbalance caused by inadequate instruction in previous grade levels or schools. Such programs can often help foster constructive student attitudes and aspirations, build student self-confidence and relieve tension arising out of the "newness" of the desegregation experience. These programs will, of course, vary greatly from community to community depending on the specific problem or problems being addressed. All such programs should, however, share certain general characteristics. As the overall intent of the Emergency School Assistance Act is to produce meaningful desegregation, those proposals which are most clearly and closely linked to the desegregation goals of a particular community will naturally be given the most serious consideration. It is recognized that a compensatory/remedial project might well reenforce and expedite school desegregation even while having its most immediate impact on a group of students predominantly or even entirely of one race. Whenever possible, however, activities which involve actual interracial experiences for the project participants should be encouraged. Individuals with professional expertise may often be indispensable to a well-run compensatory program; emphasis should, however, be given to activities which allow for broad and significant community participation in both the planning and implementation stages of the project. The following general types of programs are offered as examples of activities which have shown promise in past situations.

1. Tutorial Programs

Some communities have instituted tutorial programs for students of any ethnic group who are falling behind in one or more subject areas. Such projects are usually among the most successful compensatory/remedial programs, especially when they focus on improving basic skills such as reading and arithmetic. Tutorial

programs aimed at improving pronunciation and general language skills might offer attractive possibilities in bi-lingual areas.

Local high school students might be utilized to tutor younger students after school hours and on weekends. One such program which worked well allowed the tutors themselves to decide how many hours they wished to work—the average being from 5 to 7 hours per week. It was found that the best results were obtained when the tutors were five or more years older than their pupils and when they were promptly and regularly paid.

Tutors may, of course, be older persons—college students, interested parents, members of a particular club or organization, or merely individuals interested in taking part in such a project. They may volunteer their time or be paid (as in the above example). It is recommended that the tutor/pupil ratio be kept as low as possible. A 1:1 ratio is best and it should never exceed 1:3 unless the tutor is a professionally trained individual. The best projects have offered minimal training programs for the tutors, usually consisting of basic person-to-person relations and fundamental teaching techniques.

2. Classroom aides

Classroom-aides projects, in which adults from the community have been paid to assist teachers in the classroom for from one to three hours per day, have often been quite successful in giving the teacher a greater insight into student attitudes and problems and in providing greater opportunities for work with individual students or small groups of students. These projects work best when the aides are from the same general background as the students they are working with. The projects are similar to tutorial projects in that the best results are usually achieved when the emphasis is on improving basic educational skills. Bi-lingual aides can often provide great assistance with problems arising from language difficulties.

Obviously, a classroom-aide project which uses school facilities and operates during school hours will require the approval and active cooperation of the school administrators and teachers involved. The key to these projects lies in the relationship between the teacher and the classroom aide. Little will be achieved if the teacher attempts to limit contact between the aide and the students by assigning the former only custodial-type duties. Likewise, failure of the project is almost inevitable if the aide appears to be challenging the teacher's preeminent position in the classroom. It is therefore absolutely essential that the individual teachers and classroom aides arrive at a full understanding of their respective roles before such a project is actually put into operation.

3. Home Environment Projects

Closely allied with tutorial and classroom-aide programs are programs which stress the creation of an education-oriented home atmosphere through such activities as parent-child home reading projects and school-related family or neighborhood outings. For example, in one home reading project parents helped their children develop reading skills through an at-home "Read-Aloud" program and by encouraging them to join a "Bookworm Club". (Children were given a tally sheet on which they placed stickers provided for the 15 sections of a "bookworm"—one for each book read.) The Read-Aloud program helped children with vocabulary and pronunciation difficulties, and the Bookworm Club provided an incentive for leisure reading in general. Parents were given an initial briefing by teachers, each family was provided with a child's dictionary, and attractive "special" reading booklets were made by cutting up discarded primary level textbooks and putting each individual "story" in a colorful paper cover. This program not only helped children develop better reading skills and habits but also involved the parents more thoroughly in related school activities.

4. Vocational Projects and Counseling

On the secondary school level, concrete help in vocational matters can be one of the most useful activities performed in conjunction with the school program. A well-organized community program might coordinate the services of several agencies, including local employers, skilled workers, employment agencies, training programs, employment test administrators, and community development organizations. Students could learn interviewing techniques, job skills, impressions of what is involved in various jobs, how to get training, etc. Special work-study programs might be set up to complement those of the schools' vocational department and local OEO programs.

5. Academic Counseling

Another type of activity that could prove quite helpful to secondary school students would be counseling services designed to keep students from dropping out of school and to encourage others to go on to college. Such a program could involve students who had recently dropped out of school as well as those still in classes. It would probably be rather easy to combine these counseling services with the vocational counseling program mentioned in the preceding paragraph.

6. Libraries and Special Studies

In some communities special libraries have been set up for subjects such as ethnic-group studies, international music and art, class history of America, etc. These libraries could easily be expanded to include actual classes in subject areas inadequately covered by the school curriculum—for example, Black or Indian Studies, the role of the Mexican-American in the history of the Southwest, historical inaccuracies in school textbooks, combined minority-group studies, and related subjects.

The above examples are not, by any means, intended to be all-inclusive. Many other types or variations of compensatory/remedial programs might well be funded under the Emergency School Assistance Act. The overriding criteria will, in all cases, be program quality, community involvement, and potential contribution to meaningful desegregation.

Like all other types of programs, compensatory/remedial projects must meet the technical requirements (such as having a bi- or multi-racial Advisory Committee, securing written LEA approval *for projects utilizing school facilities or personnel,* etc.) outlined in the main body of the Grants Manual. Any group planning to submit a proposal should read these regulations carefully beforehand.

INSTRUCTIONS FOR COMPLETING "APPLICATION FOR EMERGENCY SCHOOL ASSISTANCE PROGRAM-SPECIAL COMMUNITY PROJECTS"

NOTE: To be completed by non-local educational agency applicants under The Emergency School Assistance Program.

Item 1. Enter the legal name of the applicant organization.

Items 9-10. The authorized representative is that person designated by the applicant organization to request Federal funds. The authorized representative is responsible for the correctness and completeness of the information contained in the application.

Item 11. Do not complete this item until item 25 has been completed.

Item 12. This item should be completed only by applicants who are proposing multi-district projects.

Items 13-24. Answer each question in the space provided. If more space is needed, attach extra sheets.

Mail completed application to:

Department of Health, Education, and Welfare
Office of Education
Emergency School Assistance Program
Community Projects Division
400 Maryland Avenue SW.,
Washington, D. C. 20202

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

O.M.B. NO. 51-R0863
APPROVAL EXPIRES: 12/31/70

APPLICATION FOR EMERGENCY SCHOOL ASSISTANCE SPECIAL COMMUNITY PROJECTS

FOR USOE USE ONLY
DATE APPLICATION RECEIVED
DATE APPLICATION APPROVED
TOTAL FEDERAL FUNDS APPROVED
$
NAME AND TITLE OF OE APPROVING OFFICER *(Print or type)*
SIGNATURE OF OE APPROVING OFFICER
DATE

SECTION I - APPLICANT INFORMATION

1. NAME OF APPLICANT ORGANIZATION
2. ADDRESS *(Number and street)*
3. CITY
4. STATE
5. ZIP CODE
6. COUNTY
7. CONGRESSIONAL DIST.
8. PERIOD OF PROPOSED PROJECT
   A. STARTING DATE
   B. ENDING DATE
9. NAME AND TITLE OF AUTHORIZED REPRESENTATIVE *(Type or print)*
10. SIGNATURE OF AUTHORIZED REPRESENTATIVE
11. TOTAL FEDERAL FUNDS REQUESTED
    $

SECTION II - COMMUNITY INFORMATION

12. LIST THE LOCAL EDUCATIONAL AGENCIES WHICH WILL BE AFFECTED BY THE PROJECT

13. HAS THE LOCAL EDUCATIONAL AGENCY *(agencies)* RECEIVED A GRANT UNDER THE EMERGENCY SCHOOL ASSISTANCE PROGRAM?
☐ YES ☐ NO ☐ UNKNOWN

14. GIVE NAME, ADDRESS, AND TELEPHONE NUMBER OF LOCAL EDUCATIONAL AGENCY *(To be completed only by applicants who are proposing single-district projects)*

15A. BRIEFLY DESCRIBE THE ORGANIZATION'S RELEVANT EXPERIENCE AND/OR THE EXPERIENCES OF INDIVIDUALS ASSOCIATED WITH THE ORGANIZATION IN THE AREA OF SCHOOL DESEGREGATION

15B. WHAT IS THE RELATIONSHIP BETWEEN THIS ORGANIZATION AND THE LOCAL EDUCATIONAL AGENCY?

15C. HOW WILL PARENTS AND OTHER MEMBERS OF THE COMMUNITY BE INFORMED OF THE PROJECT ACTIVITIES?

15D. HOW WILL MEMBERS OF THE COMMUNITY BE INVOLVED IN THE PROJECT?

15E. HOW HAS THE COMMUNITY BEEN INVOLVED IN THE DEVELOPMENT OF THIS APPLICATION?

APPLICATION FOR EMERGENCY SCHOOL ASSISTANCE, SPECIAL COMMUNITY PROJECTS

15F. WHAT, IF ANY, OTHER ORGANIZATIONS IN THE COMMUNITY ARE ENGAGED IN ACTIVITIES SIMILAR TO THOSE PROPOSED IN THIS APPLICATION?

16. GIVE YOUR BEST ESTIMATE OF THE TOTAL NUMBER OF PEOPLE WHO WILL BE DIRECTLY AFFECTED BY THE PROPOSED PROJECT *(If possible give the estimate by students, parents and other specific groups)*

17. CHECK THE APPROPRIATE BOXES TO INDICATE IN WHAT AREAS PROJECT ACTIVITIES ARE PROPOSED

A. ☐ COMMUNITY RELATIONS AND INFORMATION

B. ☐ COMPENSATORY/REMEDIAL

C. ☐ PARENT INVOLVEMENT

D. ☐ STUDENT AND YOUTH

E. ☐ INTER-RACIAL EDUCATION

F. ☐ TRAINING AND TECHNICAL ASSISTANCE

G. ☐ ACTIVITIES LINKED TO COMPREHENSIVE EDUCATIONAL PLANNING

H. ☐ OTHER ACTIVITIES (Specify)

18A. WHAT ARE THE MOST IMPORTANT PROBLEMS ANTICIPATED DURING THE DESEGREGATION PROCESS?

18B. HOW WILL THE PROPOSED PROJECT ACTIVITY *(activities)* SOLVE OR ATTACK THE PROBLEMS DESCRIBED ABOVE?

19. WHAT SPECIFIC RESULTS DO YOU EXPECT TO ACHIEVE THROUGH THE ACTIVITIES DESCRIBED ABOVE?

20. ADVISORY COMMITTEES

A. LIST THE NAMES OF THE ADVISORY COMMITTEE MEMBERS, GIVE THE RACIAL OR ETHNIC GROUP BREAKDOWN OF THE COMMITTEE, AND GIVE THE METHOD BY WHICH THEY WERE CHOSEN OR GIVE DETAILED PLANS AS TO HOW THE ADVISORY COMMITTEE WILL BE ORGANIZED WITHIN 30 DAYS OF RECEIPT OF GRANT

B. WHAT FUNCTIONS WILL THE ADVISORY COMMITTEE PERFORM?

C. WHAT IS THE RELATIONSHIP BETWEEN THIS COMMITTEE AND THE ADVISORY COMMITTEE ESTABLISHED BY THE LOCAL EDUCATIONAL AGENCY?

APPLICATION FOR EMERGENCY SCHOOL ASSISTANCE, SPECIAL COMMUNITY PROJECTS

21. HOW WILL THE PROJECT BE MONITORED AND EVALUATED?

22A. HOW WILL THE STAFF BE RECRUITED AND SELECTED?

22B. HOW MANY WILL BE FULL TIME? HOW MANY, PART TIME?

23. IN WHAT AREAS DO YOU NEED TECHNICAL ASSISTANCE?

24. GIVE A DETAILED EXPLANATION OF YOUR BUDGET REQUESTS

25. COMPLETE THE FOLLOWING BUDGET ITEMIZATION

CATEGORY	AMOUNT
a. Employee salaries, services and benefits	$
b. Travel and per diem	
c. Office supplies and materials	
d. Facilities rental	
e. Equipment rental	
f. Equipment purchase	
g. Contracted services	
h. Other costs *(Specify)*	
i. TOTAL FEDERAL FUNDS REQUESTED	$

APPLICATION FOR EMERGENCY SCHOOL ASSISTANCE, SPECIAL COMMUNITY PROJECTS

NAME OF APPLICANT ORGANIZATION

ASSURANCES

The applicant hereby assures the Commissioner that:

A. Federal funds made available under the program for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be available to the applicant from non-Federal sources for purposes which meet the requirements of the program, and in no case to supplant such funds.

B. A reasonable effort is being made to utilize other Federal funds available for meeting the needs of children.

C. The applicant *(i)* has not engaged in the gift, lease, or sale of property or services, directly or indirectly, to any nonpublic school or school system which, at the time of such transaction practiced discrimination on the basis of race, color, or national origin, where such gift, lease, or sale was for the purpose of, or had the effect of, encouraging, facilitating, supporting, or otherwise assisting the operation of such school or school system as an alternative to nonminority group students seeking to avoid desegregated public schools; and *(ii)* will not engage in the gift, lease, or sale of property or services to any such school or school system for any purpose.

D. The applicant will have published in a local newspaper of general circulation the terms and provisions of each project approved by the Commissioner within thirty days of scuh approval, or or will have published in a local newspaper of general circulation, within thirty days of such approval, pertinent information as to the manner in which, and the place at which, the terms and provisions of such approved project are made reasonably available to the public.

E. The applicant will complete and submit to the Office for Civil Rights of the Department of Health, Education, and Welfare, by October 15, 1970, or such other time as may be determined by that Office, an evaluation report on a form to be furnished by that Office.

F. The applicant will furnish to the Commissioner such additional information as he may deem necessary for the administartion of the program.

G. The control of funds provided under this authority and title to property derived therefrom, shall be in a public or private, nonprofit agency for the uses and purposes provided and that a public or private, nonprofit agency will administer such funds and apply them only for the purposes for which they are granted.

H. The applicant will make an annual report and such other reports to the U.S. Office of Education in such form and containing such information, as may be reasonably necessary to enable U.S. Office of Education to perform its duties under this authority, including information relating to the educational achievement of students participating in those programs, and will keep such access thereto as the U.S. Office of Education may find necessary to assure the correctness and verification of such reports.

I. The applicant agrees to an outside evaluation of the Emergency School Assistance Program by a qualified educational organization or association approved by the U.S. Commissioner of Education. The evaluation report will be submitted to the Board of Education and to the U.S. Commissioner of Education.

J. In operating its programs, the applicant will comply with Emergency School Assistance Program regulations, program Manual, and Grant or Contract terms and conditions.

K. Federal funds made available under the program will not be used by sectarian institutions of religious worship, or in connection with any part of a program of a school or Department of Divinity. The term "school or Department of Divinity" means an institution or a department or branch of an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

PRINT OR TYPE NAME OF AUTHORIZED REPRESENTATIVE	SIGNATURE OF AUTHORIZED REPRESENTATIVE

APPLICATION FOR EMERGENCY SCHOOL ASSISTANCE, SPECIAL COMMUNITY PROJECTS

NAME OF APPLICANT ORGANIZATION

CERTIFICATION OF ACCOUNTING SYSTEM

A. *(To be used when certification is by a public financial officer.)* As chief financial officer of _____ (Name of employing office) I am responsible for providing financial services to _____ (Name of applicant organization)

I hereby certify that the accounting system established for this agency has internal controls adequate to safeguard its assets, check the accuracy and reliability of its accounting data, promote operating efficiency, and encourage compliance with prescribed management policies and the fiscal requirements in Emergency School Assistance Manual.

B. *(To be used when a CPA or other duly licensed independent accountant furnishes the certification.)* I am a certified *(or duly licensed)* public accountant and have been engaged to examine and report on the accounting system of _____ (Name of applicant organization).

I have reviewed this agency's accounting system and I hereby certify that, in my opinion, it includes internal controls adequate to safeguard its assets, check the accuracy and reliability of its accounting data, promote operating efficiency, and encourage compliance with prescribed management policies and the fiscal requirements in the Emergency School Assistance Manual.

TYPE OR PRINT NAME	TITLE	DATE
SIGNATURE	ADDRESS *(Number, street, city, State, and ZIP code)*	

MEMORANDUM OF UNDERSTANDING BETWEEN THE OFFICE OF ECONOMIC OPPORTUNITY AND THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

In anticipation of the delegation of authority to the Department of Health, Education, and Welfare (HEW) by the Office of Economic Opportunity (OEO) for the purpose of developing and carrying out the Emergency School Assistance Program under section 222(a) of the Economic Opportunity Act of 1964, OEO and HEW agree to the following:

A. Policy

1. Subject to the provisions of the delegation instrument, HEW shall develop and carry out programs and projects designed to assist schools or school districts with substantial enrollments of children from low-income families in meeting the emergency transitional needs of such districts incident to the elimination of racial segregation and discrimination among students and faculty in elementary and secondary schools.

"Low-income families," as referred to in this Agreement, are those families whose incomes fall below OEO's poverty line, as set forth in OEO Instruction 6004–1a.

2. Programs and projects assisted by HEW pursuant to the delegation of authority referred to above shall not provide general aid to elementary or secondary education in any school or school system; however, as authorized in section 244(5) of the Act, special, remedial, and other noncurricular educational assistance may be provided, including the following:

(a) the provision of additional professional or other staff members to meet emergency transitional needs and for the training and retraining of school staff members to meet such needs;

(b) remedial and other services to meet the special needs of children in schools which are affected by desegregation plan or plans, including special services for gifted and talented children in such schools;

(c) comprehensive guidance, counseling, and other personal services for pupils;

(d) development of new instructional techniques and materials designed to meet the special needs of children in schools which are affected by desegregation plans;

(e) such repair or minor remodeling or alteration of existing school facilities as may be necessary to meet emergency transitional needs and the lease or purchase of mobile or demountable classroom units or other mobile educational facilities for use in meeting such needs;

(f) community activities, including public education efforts which are designed to meet emergency transition needs and are in support of a plan, program, project, or other activity having the objectives described in Paragraph A1 of this Agreement;

(g) special administrative activities to meet emergency transitional needs such as the rescheduling of students or teachers, or the provision of information to parents and other members of the general public, incident to the implementation of a desegregation plan;

(h) planning and evaluation activities; and

(i) other specially designed programs or projects which are consistent with the terms of this Agreement and the delegation of authority it implements.

3. In carrying out activities under the delegation of authority referred to above, measures shall be taken to assure compliance with the provisions of Sections 225(c) and (d) of the Act relating to non-Federal share and maintenance of effort. In view of the fact that this is an emergency program designed to aid school districts which have for the most part already firmed up their budgets for the coming school year, it is understood that HEW may desire to waive the formal non-Federal share requirements otherwise imposed by Section 225(c) and to rely instead on the school districts' general commitment to the purposes of the program. It is understood that these activities will be conducted in com-

pliance with Section 614 of the Act which prohibits Federal direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system, and with other applicable provisions of such Act.

4. No program developed and carried out under such delegation of authority shall be operated as a replacement for any existing program under other Federal law.

B. Administration and Coordination

1. Grants and contracts to carry out programs and projects referred to in this Agreement may be made directly to or with public or nonprofit private agencies, organizations or institutions, and contracts to carry out such programs and projects may be made to or with public or private agencies, organizations or institutions. Where feasible, community action agencies will be involved in planning and advisory functions and in the community activities contemplated by Paragraph A2(f) of this Agreement.

2. Primary authority to initiate policies, regulations, and issuances for such programs and projects shall rest with HEW. OEO and HEW will maintain liaison on proposed policies.

3. HEW shall be responsible for the administration of training and technical assistance grants and contracts, and all other contracts relating exclusively to such programs and projects.

4. HEW shall have the primary responsibility for inspection and audit of grants and contracts made or entered into by HEW in exercising the powers delegated to it by OEO.

5. HEW shall, in consultation with OEO, develop a plan for making a separate allotment of funds under Section 225(b) of the Act which will assure an equitable distribution of assistance among the States for developing and carrying out the programs and projects referred to in this Agreement.

6. All operating information, evaluation reports, and other data concerning the programs administered under the powers delegated to HEW by OEO shall be freely exchanged between the agencies pursuant to Section 602(d) of the Act.

John G. Veneman,
Acting Secretary of Health, Education, and Welfare.

_____ _____,
Director, Office of Economic Opportunity.

Dated: June 12, 1970.

JACKSON PUBLIC SCHOOLS, OFFICE OF THE DIRECTOR OF CURRICULUM

To: Principals and assistant principals.
Subject: Release of textbooks to private schools.

As a result of the decrease in enrollment of the Jackson Public Schools the State Textbook Board requires that we take from our stock of State owned textbooks and release these to private schools. This is to be done in as many titles as they need to meet the actual number of pupils coming from the Jackson Public Schools.

To facilitate the transaction it has been decided that the following schools may release the textbooks listed under their school to the Woodland Hills Academy. The principal will call you within a few days after receipt of this notification to determine when he can come by to pick-up the books.

You are requested to make sure that all books released are in fair or good condition. In a few cases this release of books will take your inventory below your needs for the school; where this occurs we will correct the situation by transfers or purchases.

Powell

33	New Building Better English, 9	33	Mississippi: A History
33	Modern Algebra I	33	Exploring the Sciences
33	Building Citizenship		

Brinkley

33	Modern Geometry	33	Modern Biology 1965
33	Cours Elementaire De Francais	30	Let's Drive Right

Walton

52	Elementary Mathematics, 3	30	Science Adventures
52	Elementary Mathematics, 4	30	Science in Your Life
52	Elementary Mathematics, 5	32	Science in Our World
10	Elementary Mathematics, 6	30	Science for Today and Tomorrow
52	Roberts English, 3	52	Your Towns and Cities
32	Roberts English, 4	52	At Home Around the World
32	Roberts English, 5	52	Understanding Your Country and Canada
30	Roberts English, 6		
52	Science for You	32	Understanding Latin America
30	Science All the Year		

Bailey

33	Exploring Modern Mathematics I	33	This is America's Story
33	Exploring Modern Mathematics II	33	Eurasia, Africa and Australia
33	Roberts English, 7	33	World of Living Things
33	Wide, Wide World, 7	33	World of Matter-Energy
33	All Around America, 8		

DAVID TEAGUE,
Director of Curriculum.

AUGUST 21, 1970.

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