

WITHDRAWAL SHEET

Ronald Reagan Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
letter case			
1. memo	from Chris DeMuth to Jim Baker re: Senator East's letter on redefining Federal Financial Assistance and the dispute between the Dept. of education and Justice (2pp)	1/15/82	PS
2. attachment	re: summary of options (page 3) (1p, partial)	n.d.	PS
3. attachment	re: summary of options (page 4) (1p, partial)	n.d.	PS CCB 10/18/00
COLLECTION:			
CICCONI, JAMES W.: Files, 1981-85			ggc
FILE FOLDER:			
Grove City Case; "financial assistance" definition <i>GA 9TH Box 9</i>			6/1/94

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].
- C. Closed in accordance with restrictions contained in donor's deed of gift.

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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JAN 15 1982

MEMORANDUM FOR JIM BAKER

FROM: CHRIS DeMUTH *CD*

SUBJECT: Senator East's Letter on Redefining Federal Financial Assistance and the Dispute between the Departments of Education and Justice

You requested a fact sheet and our comments on the issues raised in Senator East's letter of December 18, 1981. The Senator asked for "your thoughtful consideration" of a rule change under development by the Department of Education, but opposed by the Justice Department.

Enclosed with the Senator's letter was a copy of a letter co-signed by sixteen Senators and sent to the Attorney General on December 15, 1981. Their letter urged the Attorney General to support a Department of Education proposed change in the definition of Federal financial assistance.

Education proposed to amend its current civil rights regulations to exclude the Department's claim of jurisdiction over colleges where financial assistance is delivered directly to students. The Department of Justice believes that this proposal runs counter to the legislative history of the various statutes and case law.

Edwin Meese met with Secretary Bell and the Justice Department on this issue on January 4, 1982 and reached a compromise settlement of the dispute. This compromise would eliminate all schools that only participate in the guaranteed student loan program from the definition of those receiving Federal financial assistance. All schools whose students receive Pell grants or other direct assistance would continue to be covered by the Department's civil rights regulations.

Education believes that about 525 of the 6,000 educational institutions might benefit from its rule change, and 325 might benefit from the Meese compromise. These are extremely soft estimates.

After Education revises its proposed rules to conform to the Meese compromise and obtains Justice's approval, the rule will be submitted to OMB for review under E.O. 12291. OMB and the Presidential Task Force on Regulatory Relief have not yet been involved.

Any change in the existing rule will generate considerable controversy. Few may be satisfied by the Meese compromise. However, the change will move toward the position held by the Senator and by various educational institutions and conservative organizations. The Education proposal would have satisfied them more. Both the Education Department's proposal and the Meese compromise will be extremely unpopular with minority and civil rights groups.

Any decision on changing the existing definition of Federal financial assistance could establish a precedent for programs of assistances to students administered by other agencies, such as the Veteran's Administration.

The following attachments are provided: the fact sheet (attachment A); the options paper prepared by the Education Department for Edwin Meese; and an article in today's Washington Post on the Meese meeting along with newspaper columns on the issue prepared by President Reagan when he was a private citizen in 1977 and 1978 (attachment C).

Attachments

cc: Boyden Gray

FACT SHEET

Redefinition of Federal Financial Assistance

- . On September 25, 1981 the Education Department submitted a draft notice of proposed rulemaking to the Justice Department for review as required by E.O. 12250.
 - . The Education Department proposed to amend its current civil rights regulations to exclude the Department's claim of jurisdiction over educational institutions where Federal financial assistance is disbursed directly to students without going through the institutions. The statutes affected were: Title VI of the Civil Rights Act of 1964 (race discrimination); Title IX of the Education Amendment of 1972 (sex discrimination); and Section 504 of the Rehabilitation Act (discrimination on the basis of handicap).
 - . The Education Department proposal covered guaranteed student loans and funds disbursed directly to students under the Pell Grant program as well as other smaller financial assistance programs.
 - . Up to now, 99 percent of the funds disbursed under the Pell program has been distributed through colleges and not directly to the students.
 - . Education argued that its redefinition of Federal financial assistance was consistent with the Civil Rights Act's legislative history and statements made by Senators Hubert Humphrey, Ribicoff and Pastore that distinguished between direct and indirect payments to individuals. Justice disagrees with this interpretation on the basis of their reading of legislative history and case law.
 - . According to the Education Department, its original proposed change might benefit approximately 525 colleges from an estimated universe of about 6 thousand. The benefit would be measured in terms of lower regulatory and compliance costs associated with the requirements imposed under existing rules. However, Education could not provide any quantitative estimate of the potential savings to colleges or the cost to the Federal Government of directly dispersing Pell funds to all students.
- ~~The~~ The number of institutions that would benefit from the Department's proposal could increase significantly if they stopped acting as intermediaries between the Federal Government and the students receiving Pell grants. Under the Meese compromise, which would benefit 325 institutions under current procedures, such a change would have no effect on coverage. These estimates on the number of institutions affected are extremely soft.

- . In 1977 and 1978 President Reagan as a private citizen made strong statements supporting Hillsdale College for its resistance to Federal claims of jurisdiction based on Federal financial assistance to students. Litigation is still ongoing with Hillsdale.
- . The Justice Department objected to Education's proposed rule change. Justice maintained that all assistance to students whether by way of guaranteed student loans or directly to students or through educational institutions would be held by the courts to constitute Federal financial assistance.
- . Justice objected to the proposal pursuant to its authority under E.O. 12250, that assigns approval to the AG for regulations promulgated pursuant to the civil rights statutes in question.
- . Justice and Education agreed to go to the White House to settle their dispute. On January 4, 1982, Edwin Meese met with the Secretary of Education and high-level Justice Department officials. Before this meeting, there was a news leak regarding the dispute which may have sparked the December 18 letter from Senator East and a December 15 letter co-signed by 16 Senators and sent to the Attorney General.
- . Edwin Meese decided to allow the Department of Education to exclude the guaranteed loan program that go directly to students as a basis for claiming jurisdiction over colleges. He accepted the Justice position that the courts would invalidate any attempt to exclude any part of the Pell program.
- . The Education Department is now preparing a new draft of a proposed rule that would eliminate its claim of jurisdiction under Title VI, Title IX and Section 504 based on guaranteed loans.
- . On December 9, 1981, the Department of Justice argued before the Sixth Circuit in Hillsdale College vs. Department of Education, that all forms of student assistance are assistance to colleges and universities. Justice specifically cited the guaranteed loans and all forms of the Pell grant program.
- . On January 12, 1982, the Department of Justice advised the United States Court of Appeals for the Third Circuit, in Grove City College vs. Bell, that the Government would not amend its regulations by revoking the claim to jurisdiction based on guaranteed loans and Pell grants directly disbursed to students.
- . In 30 days, the Government must file a brief in Grove City which will formally state its current position as defined by the Meese solution on Federal financial assistance.
- . After Education revises its rule and consults with Justice, the rule must be submitted to OMB for review under E.O. 12291 before publication. OMB and the President's Task Force on Regulatory Relief have not yet been involved in this issue.

SUMMARY OF OPTIONS

"Federal Financial Assistance"

as found in Title VI, Title IX, and Section 504

as proposed by

THE UNITED STATES DEPARTMENT OF EDUCATION

Prepared by the Department of Education
for Edwin Meese for his January 4, 1982
meeting with the Attorney General and
Secretary of Education.

In September, 1981, the Department of Education submitted to the Department of Justice a proposed change in regulations governing Title VI, Title IX, and Section 504. This proposal would adopt Option 2 below. The Civil Rights Division of DOJ has not yet concurred in this proposal.

The present position of the Government -- Option 4 below -- has been challenged in two lawsuits. In Hillsdale College v. Bell, argued before the U.S. Court of Appeals for the Sixth Circuit on December 7, 1981, the college claimed that Guaranteed Loans, all Pell Grants, National Direct Student Loans (NDSL), and Supplemental Education Opportunity Grants (SEOG), four programs of student assistance, do not bring it under Title VI, Title IX, or Section 504. In Grove City College v. Bell, now pending before the Third Circuit, the college claims that Guaranteed Loans and ADS Pell Grants, the two programs in which it participates, similarly do not bring it under Title VI, Title IX, or Section 504 jurisdiction. Neither college receives any other money, and neither has ever been charged with race, sex, or handicapped discrimination.

The Government must file a brief in the Grove City College case. This brief has been postponed several times, and a report must be filed on January 12, 1982, as to what the Government's position will be.

Further, if any option other than Option 4 is chosen, then the Government should so advise the court in the Hillsdale College case. (However, none of the options which we propose will entirely settle this case, because no option will exclude SEOG's and NDSL's from Title VI, Title IX, and Section 504 jurisdiction.)

Should any option other than Option 4 be taken, the Administration will probably be charged with weakening the enforcement of civil rights legislation. On the other hand, the changes have been strongly urged for several years by leaders of independent colleges, who claim that the current regulation is beyond the intent of Congress. As a candidate and commentator, the President made several statements consistent with this view.

Under each option below, persons believing themselves to have been subjected to racial discrimination may bring suit against the college under 42 U.S.C. 1981. This statute provides a private action for damages, but does not subject the college to Government regulation or to potential cutoff of federal funds, actions which some claim are the only effective means of discouraging discrimination.

OPTIONS

Option 1. Eliminate the Department's claim to Title VI, Title IX, and Section 504 jurisdiction over colleges participating only in Guaranteed Loan Programs and the Pell Grant Program using both disbursement systems.

PRO:

- * Least intrusive into academic process.
- * Consistent with statements by President Reagan.
- * Settles Grove City College case.
- * Consistent with purpose of Higher Education Act that grants benefits to students, not colleges.
- * Consistent with exception for contracts of guaranty explicit in Title VI and implied in Title IX and Section 504.
- * Not dependent upon ADS/RDS distinction created by ED Regulations.

CON:

- * Most unacceptable to women's, minorities, and handicap groups.
- * Inconsistent with positions of previous Administration.
- * Conflicts with court decisions in Bob Jones University v. Johnson (1974) and Grove City College v. Harris.
- * Inconsistent with distinctions made in 1964 by DOJ and Senators Humphrey, Pastore, and Ribicoff between direct payments to individuals and assistance to programs.
- * ED believes RDS Pell Grants are assistance to a program and, therefore, covered by Title VI, Title IX, and Section 504.
- * DOJ believes second least winnable position before current judges.

Option 2. Eliminate the Department's claim to Title VI, Title IX, and Section 504 jurisdiction over colleges participating only in Guaranteed Loan Programs and the Alternative Disbursement System of the Pell Grant Program.

PRO:

- * Second least intrusive into academic process.
- * Settles Grove City case.
- * Consistent with purpose of Higher Education Act that grants and loans benefits to students,

not colleges.

- * Colleges receive no money directly from Government.
- * Consistent with distinction made in 1964 by DOJ and Senators Humphrey, Pastore, and Ribicoff between direct payments to individuals and assistance to programs.
- * Consistent with exception for contracts of guaranty explicit in Title VI and implied in Title IX and Section 504.
- * ED believes most consistent with legislative history as a whole.

CON:

- * Conflicts with court decisions in Bob Jones University v. Johnson and Grove City College v. Harris.
- * Dependent on ADS/RDS distinction created by ED Regulations, which DOJ believes is an artificial distinction.
- * DOJ believes least winnable position before current judges. ED disagrees.

Option 3. Eliminate the Department's claim to Title VI, Title IX, and Section 504 jurisdiction over colleges participating only in Guaranteed Loan Programs.

PRO:

- * Third least intrusive into academic process.
- * Consistent with purpose of Higher Education Act that loans benefit students, not colleges, 20 U.S.C. 1071.
- * Colleges receive no money directly from Government.
- * Consistent with exception for contracts of guaranty explicit in Title VI and implied in Title IX and Section 504.
- * DOJ believes second most winnable position before current judges.
- * ED believes second most consistent with legislative history as a whole, but we believe it to be wholly consistent.

CON:

- * Conflicts with reasoning of court decisions in Bob Jones University v. Johnson and Grove City College v. Harris.
- * Does not settle either the Grove City case or the Hillsdale case.
- * Fails to address Pell Grants and, therefore, concedes jurisdiction under these programs.
- * Inconsistent with distinction made in 1964 by DOJ and Senators Humphrey, Pastore, and Ribicoff between direct payments to individuals and assistance to programs.

Option 4. Retain the Department's claim to Title VI, Title IX, and Section 504 jurisdiction over colleges participating in any student assistance program.

PRO:

- * Acceptable to women's, minorities, and handicap groups.
- * Consistent with position of previous Administrations.
- * Consistent with court decisions in Bob Jones University v. Johnson and Grove City College v. Harris.
- * DOJ believes most winnable position before current judges.

CON:

- * Most intrusive into academic process.
- * Conflicts with statements of President Reagan.
- * Does not settle either the Grove City case or the Hillsdale case.
- * Inconsistent with purpose of Higher Education Act that grants benefits to students, not colleges.
- * Colleges receive no money from Government.
- * Inconsistent with distinction made in 1964 by DOJ and Senators Humphrey, Pastore, and Ribicoff between direct payments to individuals and assistance to programs.
- * Inconsistent with exception for contracts of guaranty explicit in Title VI and implied in Title IX and Section 504.
- * ED believes least consistent with legislative history as a whole. (DOJ disagrees.)

DEFINITIONS

Title VI is Title VI of the Civil Rights Act of 1964, and prohibits discrimination on the basis of race, 42 U.S.C. 2000d.

Title IX is Title IX of the Education Amendments of 1972, and prohibits discrimination on the basis of sex, 20 U.S.C. 1681.

Section 504 is Section 504 of the Rehabilitation Act of 1973, and prohibits discrimination on the basis of handicap, 29 U.S.C. 794.

All these statutes prohibit the specified discrimination "in any program or activity receiving Federal financial assistance."

Pell Grants are Basic Educational Opportunity Grants of up to \$1,800 a year distributed to students under two disbursements systems created by ED regulations. Under one system, RDS (Regular Disbursement System), grants are paid to colleges, which then pay the students. Under the other, ADS (Alternative Disbursement System), grants are paid directly to students.

Guaranteed Loans are loans made by banks, etc., to parents and students which are guaranteed by the Government. An interest subsidy is paid by the U.S. Government to the bank.

Rights and College Aid

Washington Post
p. A-16 Friday, Jan. 15, 1982

Education Secretary Loses a Round

By Charles R. Babcock
Washington Post Staff Writer

Secretary of Education Terrel H. Bell has lost a bureaucratic tug-of-war with the Justice Department over a proposed regulation that would have freed 1,000 colleges and technical schools from the reach of key civil rights

Bell had proposed changing the definition of "federal financial assistance" to exclude student aid, but Justice lawyers recommended against it on legal grounds.

Bell's general counsel, Daniel Oliver, argued, in turn, that political rather than legal grounds should be the basis of the decision. But last week White House counselor Edwin Meese III accepted the Justice recommendation, sources said.

As a result, Justice lawyers filed papers in court Tuesday saying that the Education Department would not propose the change. The change would have made a suit filed against the government by Grove City College in Pennsylvania moot.

The college had challenged the existing regulations because the only federal aid it receives is the money its students get directly from the government or banks, in the form of grants or loans.

Bell said in a telephone interview yesterday that he

couldn't discuss the White House meeting with Meese, but he said he still feels that "aid to students that is not campus-based does not constitute aid to the institution." Civil rights groups said his proposal would have excluded many schools from coverage of laws barring discrimination based on race, sex or handicap.

Bell said, "I'd like to emphasize that I do not want to do anything in any way to take any action that's going to aid or abet and encourage any institution, public or private, to get out from under the civil rights laws."

Asked why he proposed changing the regulation at all, he replied, "I think any institution should comply with the civil rights laws. This is more than compliance. This is bringing an institution under the surveillance" of the federal government. That means burdensome reports and regulations, he said.

"This may seem inconsistent," he acknowledged. "You have to realize I'm a career school bureaucrat, and maybe I have too much empathy for the school officials."

Bell added that his department still is considering whether to propose changing the definition so that schools whose students only received guaranteed loans, rather than Pell grants for needy students, would be excluded from the rules.

Ronald Reagan Newspaper Column
For Release Friday, February 3, 1978

Subject: Hillsdale v. HEW

Hillsdale College in Southern Michigan may be small, but it has stopped the Federal education juggernaut dead in its tracks.

With only 1,028 students (and a lot of friends who share its views), Hillsdale has, for all its 134 years, exemplified the highest ideals of liberal arts education. Founded two decades before Lincoln's Emancipation Proclamation, Hillsdale has always been open to blacks as well as whites (and to all races, for that matter). Its enrollment is nearly evenly divided between men and women.

Hillsdale encourages its students to be independent, inquiring, individualistic. When it comes to its own independence, Hillsdale practices what it preaches. It has never taken a nickel of government money.

All of this had made the little college a sort of Typhoid Mary around the Department of HEW in Washington, D.C., where battalions of social engineers spend all their working hours devising new ways to make schools and colleges conform to their view of what education should be (starting with federal control).

For several years, the HEW bureaucrats have been trying to find a way to get Hillsdale to nuckle under to its rules and regulations. The nation's largest universities have to accept federal control because they accept federal money. Hillsdale, on the other hand, has always shown tincupmanship.

Last year, HEW thought it had finally found a way to bring Hillsdale to heel. It announced that because 205 individual Hillsdale students received veterans' benefits, government student loans, or loan guarantees,

the college itself was a recipient for federal aid.

Hillsdale's answer was to launch a \$29 million independent fund drive. To date, it is nearly halfway to its goal and some of the funds will be earmarked to help students so they won't have to get government loans.

Like the title of a book that was popular not long ago, the bureaucrats seem to believe in winning by intimidation. Their next move was to set January 8th as a deadline for Hillsdale to swear to a government affirmative action statement that it did not discriminate against women. Since it has never discriminated against anyone and since it believes it is not subject to HEW edicts, Hillsdale ignored the deadline.

Next, college officials were notified that they had violated federal law and were summoned to appear at an HEW administrative hearing in Denver, 700 miles away. HEW claims that because it rewrote its 1974 anti-discrimination guidelines to include institutions "benefited by" federal funds (in addition to those receiving money directly), the student loans make Hillsdale subject to its rules.

HEW has also threatened to cutoff the student loans aggregating some \$300,000 (although nearly half of that amount involves only federal guarantees of private bank loans).

Hillsdale will contest HEW's claims at the hearing. Its chances of winning are less than odds-on, however, for HEW will act as prosecutor, judge and jury. If the hearing goes against Hillsdale, as college officials expect, the case may one day end up in the Supreme Court.

Will Hillsdale fight for its independence all the way to the highest court? Specifically, they haven't said, but Jerry Roberts, their Vice President for College Relations and Development, put it this way: "Hillsdale will not yield so long as there are enough people who believe as we do."

By RONALD REAGAN

Federal Harassment Worsening

RALPH NADER pouted. The bra burners blustered. Jimmy Carter had not done precisely as they wished when it came to picking his cabinet. At least they weren't willing to withhold judgment till after he had finished the process and taken office.

Behind them was a Greek chorus of editorial page and airwave pundits who stroked their chins and furrowed their brows while second-guessing all of Carter's decisions.

The political reporters—themselves facing deadlines as inevitable as ever, but with very little to report—resorted to a non-stop speculative hash and rehash of who would be chosen for which job and how well he or she could be expected to perform on the job.

Altogether, the transition between administrations has been a restless time for Washington, D.C. With Congress not around to arm twist the special interests and assorted axe grinders have had to make do by trying to lean on Carter through whatever attention they could attract from the news media.

THOUGH I DON'T expect to be bashful about criticizing Carter: goof's when they occur, it seems to me we owe the new President the benefit of the doubt, at least for now.

He will have his hands full, wrestling that King Kong of bureaucracies by-the-Potomac; nudging

the economy forward without aggravating inflation; and preventing the Russians from permanently assigning us to No. 2 in defense capability. He should have a chance to get on with those jobs without a lot of Monday morning quarterbacking doing their stuff before the game has begun.

Speaking of that giant bureaucracy, when it comes to higher education, it seems to be exorcising "the arrogance of officialdom," which Cicero once described in ancient Rome.

The bureaucrats' interpretation of "affirmative action" is a case in point. Congress didn't mandate it; the bureaucrats of HEW and EEOC stitched their "guidelines" together after interpreting a presidential order.

Bureaucratic harassment over such matters has gotten so bad that the President of Columbia University, William T. McGill, recently told a conference group that it just doesn't pay to fight city hall—or Washington, D.C.—anymore.

He warned his listeners of "coercive regulation as an exercise of power by inexperienced young advocates of narrow constituency groups" in one breath, but in another argued for colleges and universities to appease the federal bureaucrats when they come calling. Alas, he noted, the cost in time and money of fighting them in court—even if you win—is just too great.

BUT, WHILE Columbia is caving in, little Hillsdale College in Michigan is determined to knock the stuffings out of the bureaucrats. For 132 years it has been fiercely independent of government. Not a nickel has been asked for or received. Of course this gives the HEW elitists fits, but they think they have finally found a way to strangle Hillsdale.

HEW alleges that because some individual Hillsdale students receive veterans benefits and national student loans, the college itself is the recipient of federal aid. If HEW yins, it could move in on Hillsdale with customary arrogance.

Discrimination isn't the issue, according to Hillsdale President George C. Roche III. Freedom is. "We will not comply with Title IX (so-called anti-sex discrimination) regulations as put forth by HEW," he says, "but this does not mean that we wish to discriminate against any group. On the contrary, since its founding, Hillsdale has voluntarily maintained a policy of non-discrimination. Blacks and women have had equal standing in Hillsdale's classrooms since before the Civil War."

Instead of giving up, Hillsdale is beating the bushes for \$26 million in endowment, some of which will go to replace those federal student loans with private ones.

President McGill, meet President Roche.

King Features Syndicate

82/01/13

OFFICE OF MANAGEMENT AND BUDGET
CORRESPONDENCE CONTROL

OMB CONTROL NO: 11113
CORRESPONDENT : SEN JOHN P EAST
ORGANIZATION :
DATE OF CORR. : 81/12/18

FOR ACTION : LVE

INFO : IRA
OTHER REF : 55530

COMMENTS : JIM BAKER WOULD APPRECIATE THIS INFORMATION AS A
PRIORITY BY JANUARY 15

INSTRUCTIONS: ACTION OFFICE SIGNATURE, COPY TO CORRESPONDENCE UNIT
SEND COPY OF RESPONSE AND ORIGINAL INCOMING CORRESPONDENCE
TO WHITE HOUSE LIAISON, ROOM 62. PUT THE WHITE HOUSE AND
OMB CONTROL NUMBERS ON ALL COPIES.

* **RESPONSE DUE TO DIRECTOR'S OFFICE** *
* **BY 82/01/15** *

SUBJECT: EDUCATION REGULATION DEFINITION FEDERAL FINANCE

REMARKS:

	PREPARED	CLEARED	CLEARED	CLEARED	CLEARED	CLEARED
SURNAME AND DIVISION	Sheppard RM/OIRA	Scurry RM/OIRA	Tozzi OIRA	DeMuth OIRA	David Benson Ed Harper RD	
INITIALS AND DATE	RS 1/15/82	JS 1/15/82	JS 1/15/82	JS 1/15/82	JS 1/15/82	JS 1/15/82

THE WHITE HOUSE OFFICE

11113

REFERRAL 82 JAN 13 9:00
JANUARY 13, 1982

STAFF
AGENCY LIAISON UNIT

TO: OFFICE OF MANAGEMENT AND BUDGET
ATTN: LYN COWAN

ACTION REQUESTED:
FOR COMMENT/RECOMMENDATION

REMARKS: ALSO REFERRED TO DOJ
JIM BAKER WOULD APPRECIATE THIS INFORMATION AS A PRIORITY BY
JAN 15 82, ALONG WITH COMMENTS PLEASE FURNISH FACT SHEET

DESCRIPTION OF INCOMING:

ID: 055530

MEDIA: LETTER, DATED DECEMBER 18, 1981

TO: JAMES A. BAKER

FROM: THE HONORABLE JOHN P. EAST
UNITED STATES SENATE
WASHINGTON DC 20510

SUBJECT: WRITES REGARDING THE DEPARTMENT OF
EDUCATION'S PROPOSED CHANGE IN THE DEFINITION
OF "FEDERAL FINANCIAL ASSISTANCE" IN VARIOUS
NOTED REGULATIONS

PROMPT ACTION IS ESSENTIAL — IF REQUIRED ACTION HAS NOT BEEN
TAKEN WITHIN 9 WORKING DAYS OF RECEIPT, PLEASE TELEPHONE THE
UNDERSIGNED AT 456-7486.

RETURN CORRESPONDENCE, WORKSHEET AND COPY OF RESPONSE
(OR DRAFT) TO:
AGENCY LIAISON, ROOM 62, THE WHITE HOUSE

SALLY KELLEY
DIRECTOR OF AGENCY LIAISON
PRESIDENTIAL CORRESPONDENCE

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

- O - OUTGOING
 - H - INTERNAL
 - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 81/12/18

Name of Correspondent: Senator John P. East

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: writes regarding the Dept of Education's proposed change in the definition of "federal financial assistance" in various noted regulations

ROUTE TO:		ACTION	DISPOSITION			
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>omb</u>	<u>Kathy Carnalier</u>	<u>ORIGINATOR</u>	<u>82,01,12</u>	<u>py 1</u>	<u>-</u>	<u>1 1</u>
	<u>Lyn Cowan</u>	<u>C+F</u>	<u>82,01,13</u>	<u>py 1</u>	<u>-</u>	<u>1 1</u>
	<u>DOJ</u>	<u>C+F</u>	<u>82,01,13</u>	<u>py 1</u>	<u>-</u>	<u>1 1</u>
			<u>1 1</u>			<u>1 1</u>
			<u>1 1</u>			<u>1 1</u>

- ACTION CODES:**
- A - Appropriate Action
 - C - Comment/Recommendation
 - D - Draft Response
 - F - Furnish Fact Sheet to be used as Enclosure
 - I - Info Copy Only/No Action Necessary
 - R - Direct Reply w/Copy
 - S - For Signature
 - X - Interim Reply
- DISPOSITION CODES:**
- A - Answered
 - B - Non-Special Referral
 - C - Completed
 - S - Suspended
- FOR OUTGOING CORRESPONDENCE:**
- Type of Response = Initials of Signer
 - Code = "A"
 - Completion Date = Date of Outgoing

Comments: Jim Baker would appreciate this information as a priority - by Jan 15, 1982

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

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 - n - 2 - Ronald Reagan
 - n - 3 - Ron
 - n - 4 - Dutch
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 - n - 6 - Ronald
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 - n - 2 - Nancy
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United States Senate

WASHINGTON, D.C. 20510

December 18, 1981

The Honorable James A. Baker III
Chief of Staff and
Assistant to the President
The White House
Washington, D. C. 20500

yes
12/18 Ciccan draft
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Dear Mr. Baker:

The Department of Education has proposed a change in the definition of "federal financial assistance" in regulations issued under Title VI of the Civil Rights Act of 1964, Title IX of the 1972 Education Amendments, and Section 504 of the 1973 Rehabilitation Act. The proposed change would free from federal regulation those colleges which receive no federal financial assistance but have students receiving government loans or grants.

Sixteen senators have signed a letter urging Attorney General William French Smith to support the Department of Education's proposed change in the definition of financial assistance. I have enclosed a copy of the letter that was signed by the sixteen senators only two days after newspaper articles in the New York Times and the Washington Post disclosed opposition within the Department of Justice to the Department of Education's proposed change in regulations.

The prompt response of such a large number of senators indicates the depth of concern in the Senate over the inexplicable opposition of officials in the Department of Justice.

President Reagan has long supported limits on the growth of bureaucratic control over higher education and I hope the Reagan Administration will do everything possible to establish such limits. I have enclosed a copy of President Reagan's column in the Denver Post on January 7, 1977 in which he complimented Hillsdale College for fighting overreaching bureaucratic regulations. The Department of Education is now proposing to change the same overreaching regulations that were criticized in the column.

It is basic to the principles of liberty that Hillsdale College and other private institutions of public learning should enjoy independence from federal regulation during this Administration and future Administrations. I will greatly appreciate your thoughtful consideration of this important issue.

With high regard,

John P. East
John P. East

JPE:jsh

Enclosures

United States Senate

WASHINGTON, D.C. 20510

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December 15, 1981

Hon. William French Smith
Attorney General
Department of Justice
10th and Constitution Ave., NW
Washington, D.C. 20530

Dear Mr. Attorney General:

An article in the Washington Post for December 15 indicates that the Department of Justice will not support the Department of Education's proposed change in the definition of "federal financial assistance" to colleges. The change would free from federal regulation those colleges which have no federal link but have students receiving government loans or grants.

The plain language of Title VI of the Civil Rights Act of 1964, Title IX of the 1972 Education Amendments, and Section 504 of the 1973 Rehabilitation Act indicates that only "programs or activities receiving federal financial assistance" are subject to federal control and jurisdiction. It is overreaching to argue that schools like Hillsdale College, Grove City College and Brigham Young University, which accept no government aid, are recipient institutions because students at these schools receive direct government aid.

We do not wish to condone any manner of invidious discrimination by any college. We simply believe that the scope of federal regulation of higher education must be limited by the plain meaning of Titles VI, IX and Section 504. In addition, we believe that the continued growth of federal regulation of private higher education is inconsistent with President Reagan's position in his column on the subject which appeared on January 7, 1977 in the Denver Post and other papers. In that column, President Reagan complained that "when it comes to higher education, /the bureaucracy/ seems to be exercising 'the arrogance of officialdom,' which Cicero once described in ancient Rome."

1113

Hon. William French Smith--page 2

We urge you to support the Department of Education's proposed change in the definition of financial assistance.

Sincerely,

John P. East
John P. East

Jesse Helms
Jesse Helms

Steve Symms
Steve Symms

Orrin G. Hatch
Orrin G. Hatch

Chuck Grassley
Chuck Grassley

Mark Hatfield
Mark Hatfield

Roger W. Jepsen
Roger W. Jepsen

Dan Quayle
Dan Quayle

Jim McClure
Jim McClure

Don Nickles
Don Nickles

Edward Zorinsky
Edward Zorinsky

Jake Garn
Jake Garn

Paula Hawkins
Paula Hawkins

S. I. Hayakawa
S. I. Hayakawa

Thad Cochran
Thad Cochran

Jeremiah Denton
Jeremiah Denton

CC: President Ronald Reagan,
Edwin Meese III, James A. Baker III, Michael K. Deaver,
Hon. Terrell Bell, Max L. Friedersdorf, Lyn Nofziger
Hon. William Bradford Reynolds, Martin Anderson

By RONALD REAGAN

Federal Harassment Worsening

RALPH NADER pouted. The bra burners blustered. Jimmy Carter had not done precisely as they wished when it came to picking his cabinet. At least they weren't willing to withhold judgment till after he had finished the process and taken office.

Behind them was a Greek chorus of editorial page and airwave pundits who stroked their chins and furrowed their brows while second-guessing all of Carter's decisions.

The political reporters—themselves facing deadlines as inevitable as ever, but with very little to report—resorted to a non-stop speculative hash and rehash of who would be chosen for which job and how well he or she could be expected to perform on the job.

Altogether, the transition between administrations has been a restless time for Washington, D.C. With Congress not around to arm twist the special interests and assorted axe grinders have had to make do by trying to lean on Carter through whatever attention they could attract from the news media.

THOUGH I DON'T expect to be bashful about criticizing Carter goof's when they occur, it seems to me we owe the new President the benefit of the doubt, at least for now.

He will have his hands full, wrestling that King Kong of bureaucracies by the Potomac; nudging

the economy forward without aggravating inflation; and preventing the Russians from permanently assigning us to No. 2 in defense capability. He should have a chance to get on with those jobs without a lot of Monday morning quarterbacking doing their stuff before the game has begun.

Speaking of that giant bureaucracy, when it comes to higher education, it seems to be exercising "the arrogance of officialdom," which Cicero once described in ancient Rome.

The bureaucrats' interpretation of "affirmative action" is a case in point. Congress didn't mandate it; the bureaucrats of HEW and EEOC stitched their "guidelines" together after interpreting a presidential order.

Bureaucratic harassment over such matters has gotten so bad that the President of Columbia University, William T. McGill, recently told a conference group that it just doesn't pay to fight city hall—or Washington, D.C.—anymore.

He warned his listeners of "coercive regulation as an exercise of power by inexperienced young advocates of narrow constituency groups" in one breath, but in another argued for colleges and universities to appease the federal bureaucrats when they come calling. Alas, he noted, the cost in time and money of fighting them in court—even if you win—is just too great.

BUT, WHILE Columbia is caving in, Hillsdale College in Michigan is determined to knock the stuffings out of the bureaucrats. For 132 years it has been fiercely independent of government. Not a nickel has been asked for or received. Of course this gives the HEW elitists fits, but they think they have finally found a way to throttle Hillsdale.

HEW alleges that because some individual Hillsdale students receive veterans benefits and national student loans, the college has to be the recipient of federal aid. If HEW yanks it, could move in on Hillsdale with customary arrogance.

Discrimination isn't the issue. According to Hillsdale President George C. Roche III, Freedom is. "We will not comply with Title IX (so-called anti-sex discrimination) regulations as put forth by HEW," he says, "but this does not mean that we wish to discriminate against any group. On the contrary, since its founding, Hillsdale has voluntarily maintained a policy of non-discrimination. Blacks and women have had equal standing in Hillsdale's classrooms since before the Civil War."

Instead of giving up, Hillsdale is beating the bushes for \$29 million in endowment, some of which will go to replace those federal student loans with private ones.

President McGill, meet President Roche.

—King Features Syndicate