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Private Schools Snared In Students' Safety Net

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The political right has played a big role in expanding the federal government's financial support for private education, even though some have worried about the strings attached to this aid.

Mainstream Republicans and conservative Democrats who have promoted greater subsidies -- through school voucher programs, for instance -- argue that doing so is worthwhile because private schools are more innovative and on the whole less bureaucratic than public systems. Concerns about government regulations have been mostly ignored, particularly by urban Roman Catholic schools desperate for financial help. In fact, at least 80 percent of parochial schools now receive some form of federal subsidy.

The issue of how much this aid should entail closer government regulation was sharply outlined two weeks ago, though, when the House passed legislation intended to address reported instances in which schools have used harsh methods to restrain and discipline unruly students -- frequently kids with disabilities. The bill prescribes how schools can use physical force on their students.

The legislation, by Democrat George Miller of California and Republican Cathy McMorris Rodgers of Washington, was set in motion by a Government Accountability Office investigation last year that found school officials had actually killed students in a few cases while seeking to restrain them. Miller and Rodgers have a long list of advocacy group supporters, including the American Academy of Pediatrics and the American Federation of Teachers.

Their measure passed largely along party lines; many Republicans said they opposed it not just because it would impose restrictions on how schools deal with students, but also because Miller and Rodgers made it clear the legislation was intended for any school that accepts federal money -- public, parochial or private. Such a sweep across the educational system drew opposition as well from religious conservatives and advocates for private schools. (The companion Senate bill, by Democrat Christopher J. Dodd of Connecticut, hasn't budged from committee.)

The House action also has led to some introspection by supporters of vouchers and other aid to private schools about government influence on private education. "This bill the House passed is a good example that even some limited involvement in federal programs can lead to overregulation," said Lindsey Burke, a policy analyst at the Heritage Foundation, a conservative think tank.

Adding to the concerns, Andrew J. Coulson, director of the Center for Educational Freedom at the libertarian **Cato Institute** and a longtime opponent of vouchers, is working on a report he says will show that private schools that participate in locally run voucher programs -- the only federally financed program is in the District of

Columbia -- face an increased regulatory burden, affecting everything from curricula to hiring to admissions policies.

Such regulation, Coulson argues, undermines a pillar of private education, its curriculum diversity -- the subjects that private schools teach and the way they are taught. What results for parents and children from such regulation, he says, are educational choices "homogenized under a suffocating blanket of regulations."

Those who have promoted vouchers say that government regulations have been modest and that the inner-city private schools that benefit the most from vouchers have had trouble getting students who can pay tuition and, thus, are willing to trade some regulation for a healthy enrollment.

What sets the school discipline bill apart in this debate, though, is that for the first time federal rules would be imposed on private schools that have not entered into any agreement with the government -- rather, they would be subject to regulation because the students they admit are eligible for federal subsidies.

Rules of the Game

The federal money that ends up at private schools is mainly delivered through two laws: the one governing federal aid for elementary and secondary schools, known as the No Child Left Behind law after the version George W. Bush pushed to enactment in his first year as president, and the separate law regulating the education of the disabled. Private schools benefiting from the disabilities law have long accepted a wide range of government regulation. They typically contract with local public school districts to provide specialized services to students with disabilities. The contract provides tuition but also sets clear rules governing curriculum, teacher credentials and testing.

More private schools benefit from the No Child law, which authorizes a range of programs, including those to help students from poor families and students who aren't fluent in English and to provide teacher training.

Congress extended the money to private schools so as not to punish eligible students just because their parents chose to enroll them in private schools. The result is a system whereby public school teachers sometimes provide services on the grounds of private schools. By Education Department estimates, more than 40 percent of private schools benefit from these programs.

But private school advocates say the funding is hardly comparable to the contractual arrangements into which private schools serving students with disabilities enter. And the legislation on student discipline and restraint, they say, is well beyond what is required by the Elementary and Secondary Education law.

"For the neighborhood private schools, the federal government has never set certification or training requirements for personnel," says Joe McTighe, executive director of the Council for American Private Education. "This would be unprecedented in that it's federal or congressional meddling into the disciplinary practices of these institutions."

There's widespread agreement that the practices targeted by the bill -- physical restraint or seclusion of students in non-emergency situations, as well as the use of chemicals, without a doctor's prescription, to subdue a child -- should be outlawed. Some specialized schools use such methods with students who have severe

behavioral problems but usually within a program approved by the child's guardians and medical professionals, and typically in emergency situations. The bill would provide exceptions for such uses.

McTighe accepts that the bill's restrictions on physical force are not controversial, but he worries that the language would lead to second-guessing by school staff about when they can intervene in violent or life-threatening situations and leave themselves and their schools liable to litigation.

Worried About a 'Slippery Slope'

But the larger concern, McTighe says, is that in future legislation the rules may be more intrusive, limiting the scope of curriculum diversity that makes private education desirable. "Our concern," he says, "is the slippery slope."

Last week, in fact, a panel of educators selected by state governors and school superintendents announced the draft of a uniform set of educational standards they think all schools should follow. President Obama has made clear he wants to tie federal aid for low-income students to school acceptance of national standards.

And McTighe is not alone in his concern over where regulation is headed. The U.S. Conference of Catholic Bishops and the American Association of Christian Schools joined McTighe's group in opposing the House bill. Earlier this month, the Family Research Council, an influential advocacy group for religious conservatives, also weighed in against it.

Democrats in Congress, meanwhile, have been overwhelmingly supportive, pushed by their allies in the disability rights community. Miller, who chairs the Education and Labor Committee, feels passionately about it, having commissioned the GAO report after advocates for the disabled brought the issue to his attention. Dodd, who a decade ago led an effort to restrict the use of physical force in health care facilities, was also an easy recruit.

But getting Rodgers on board -- in defiance of most of her caucus -- was a coup. She says she gravitated toward the issue because she has a two-year-old son with Down syndrome. Many of the victims of excessive force have been children with disabilities, and she says that many states have been negligent in protecting them. The GAO's report, which came out last May, found that 19 states have no laws or regulations in this area, while others are not comprehensive enough to protect all students in every type of school.

Rodgers says she would not support efforts by the federal government to write curricula for private schools, and she worked with advocates for home schoolers and Christian schools to ensure that the bill would not affect them as long as they did not take federal funds. But she feels strongly that the others should have to abide by the rules. "I think we have an obligation to keep our children safe, and this is a very narrowly written bill aimed at doing that," she said, adding that she views the slippery slope argument as a stretch.

For Coulson and other conservative critics the debate highlights what they see as the dangers of taking money from the government. "The weight that most supporters of school choice have placed on the threat of regulatory encroachment is just not very great," Coulson said. "They haven't seen it as decisive."

For Further Reading: *School discipline bills (HR 4247, S 2860), CQ Weekly, p. 573; D.C. vouchers, p. 166; federal aid for educating the disabled (PL 108-446), 2004 Almanac, p. 7-3; No Child Left Behind law (PL 107-110), 2001 Almanac, p. 8-3.*

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