

Schooling the State: ESEA and the Evolution of the U.S. Department of Education



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This article examines the evolution of the role of the “state” in American K–12 education and analyzes the history of the Elementary and Secondary Education Act (ESEA) through the entity responsible for its implementation, the U.S. Department of Education. More specifically, it explores how and why national administrative capacity and the design and implementation of federal policy in education in the United States underwent a dramatic shift between 1965 and 2014. It will address these questions through an analysis of the ways in which the mission and activities of the Department of Education have changed since the passage of ESEA in 1965. For the department to be effective in gaining states’ compliance with federal education policies, it needs sufficient statutory authority, administrative capacity, and political support. However, throughout most of the history of the department these resources have not been present.

Keywords: federal education policy, U.S. Department of Education, Elementary and Secondary Education Act

This article analyzes the history of the Elementary and Secondary Education Act (ESEA) through the entity that is responsible for its implementation, the U.S. Department of Education (ED). More specifically, it explores how and why national administrative capacity and the design and implementation of federal policy in education in the United States underwent a dramatic shift between the 1965 passage of ESEA and 2015. The United States’ multilevel and fragmented education governance structure has made the creation of national policy in education very complex, both politically and administratively (Bailey and Mosher 1968, vii; for more on the history of educational politics and policymaking in the United States, see McGuinn 2006; Manna 2006). Yet, persistent racial and socioeconomic achievement gaps, global

economic competition, and concerns about the performance of U.S. students on international tests have led to an increasingly active federal role in American public schools.

Education in the United States historically has been characterized by local control and the federal government has no constitutional authority to dictate education policy to the states. Beginning with the National Defense Education Act of 1958 and the Elementary and Secondary Education Act of 1965, however, national policymakers have used the grant-in-aid system to pursue federal goals in public education. To claim their share of a growing pot of federal education funds, states have had to agree to comply with a wide array of federal policy mandates. These mandates initially focused on ensuring more equitable school

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funding and access rather than the academic performance of students and schools. A new federal focus on accountability for student achievement and school reform was outlined in the Improving America's Schools Act of 1994 and was given more "teeth" in the No Child Left Behind Act (NCLB) in 2001. These developments have involved the federal government for the first time in core matters of school governance—such as academic standards, student assessment, teacher quality, school choice, and school restructuring—and fundamentally altered the relationship between the federal government and the states in education policy. They have also severely strained the federal grant-in-aid system and the administrative capacity of the Department of Education. For the ED to be effective in gaining state compliance with federal education policies, it needs sufficient statutory authority, administrative capacity, and political support. Still, throughout most of the thirty-five-year history of the department, these resources have not been present.

This article provides an overview of the evolution of national administrative capacity and the implementation of federal education policy in the United States between 1965 and 2015 to examine the process by which federal power over schools has become institutionalized over time. The relationship between Washington and the states in the area of education has historically been predicated on cooperation rather than conflict, due to state education agencies' long dependence on the Department of Education for a considerable portion of their budgets (about 40 percent on average), and because the federal government rarely interfered with core state education policies before the 1990s. (The department did, however, intervene forcefully on behalf of the civil rights of minority, English-language learners, and special education students in response to a series of Supreme Court rulings between 1950 and 1975.)

The challenge in the post-NCLB era is that the feds have demanded that states develop new systems for tracking and disseminating student achievement data and intervening in struggling schools. States resent this new level of federal involvement and have struggled to meet all of the federal mandates. Conse-

quently, as federal goals and methods have diverged from those of the states, the intergovernmental relationship has undergone a significant transformation. A central contribution of this article is thus to offer a detailed analysis of the new educational federalism in the post-NCLB era. It assesses how the policy mandates of the law have affected the institutional capacities and incentives for reform in state and federal departments of education to illuminate the administrative mechanisms through which this new federalism operates. Writing in the 1960s, Stephen Bailey and Edith Mosher articulate the many challenges to using federal power to drive school reform, challenges that continue to ring true today. "Both in the innovative and administrative aspects of public policy, a grant-in-aid agency must operate in a complex political environment. It must function in an intricate web of tensions spun by historical circumstance and by both coordinate and cross-purposes: congressional, presidential, judicial, group interest, intra-agency, inter-agency, inter-governmental, personal, societal, and even international. When as is the case with aid to education, the magnitude of Federal involvement is increased with dramatic suddenness, these tensions are particularly illuminated and exacerbated" (1968, vii).

The original ED was a classic example of a "captive agency"—created for and largely operated by members of the education establishment and therefore unwilling to fundamentally challenge it. As a result, the ED has faced three distinct challenges in implementing NCLB. The first challenge is a systemic one due to the complicated nature of public administration in a federal system where political and administrative power is highly fragmented and contested. Second, the purposes of ESEA have changed due to the recognition of new educational problems, the adoption of new remedies, and shifts in partisan control in Washington. Third, the agency itself has undergone its own institutional transformation in recent years as it has reorganized itself in response to new political demands and a new policy mission. Reformers from both the Left and Right now seek to use the department as a change agent in driving educational improvement and have pushed it to break free of the

hold of the educational clientele groups to which it has long been beholden. The “liberation” of a “captured” agency has necessitated creating new institutional norms, structures, and tools in the ED to implant a new operational mission.

ORIGINS: THE EARLY FEDERAL ROLE IN EDUCATION

Education policymaking in the United States has traditionally been very decentralized and dominated by local and (to a lesser extent) state governments. The U.S. Constitution’s silence on a federal role in education, supplemented by tradition and the reserved powers clause of the Tenth Amendment, meant that schooling was a very locally run affair from colonial times through the early days of the Republic. It was not until the common school movement of the nineteenth century that the states began to develop organized systems of public schools, with Massachusetts opening the first public high school in 1821 and passing the nation’s first compulsory school attendance law in 1852. It was not until 1918, however, that such laws were in force in the other forty-seven states (Newman 1994). Even then, state supervision and control over the education policies of locally financed and run public schools remained weak, as evidenced by the fact that, in 1890, on average, state departments of education employed only two staffers, one of whom was the superintendent (Tyack and Cuban 1997). The origin of federal involvement in education can be traced to the Land Ordinance Act of 1785 and the Northwest Ordinances of 1787, which linked the drawing of property lines with the creation of schools. Beginning with the admission of Ohio as a state in 1803, Congress required that all subsequent states guarantee public education in their state constitutions as a condition of statehood. The federal government became more directly involved in education—and set a precedent for grant-in-aid programs—with the passage of the Morrill Act in 1862. The act authorized the creation of a network of what became known as land-grant colleges and committed the federal government to support them financially through the sale of federally owned lands.

Although the federal government played a crucial early role in the development of K–12 education, it stayed virtually absent from the management of public schools until the second half of the twentieth century. The size and scope of national administrative power in education has, until the past decade or so, been quite small—a fact that is both a cause and a consequence of limited federal educational goals. A U.S. Office of Education (USOE) was created in 1867 but was given little staff or resources and a very proscribed mandate to gather statistical data on schools. Its founding legislation declared that the office was “for the purpose of collecting such statistics and facts as shall show the condition and progress of education in the several states and territories, and of diffusing such information respecting the organization and management of schools and school systems, and methods of teaching, as shall aid the people of the United States in the establishment and maintenance of efficient schools systems, and otherwise promote the cause of education throughout the country” (Kursh 1965, 11–12).

Even this limited role encountered a great deal of opposition from states’ rights advocates, who saw any federal role in education as inappropriate and threatening to their sovereignty. Harry Kursh notes “a lingering fear that almost any Federal activity—even an ingenuous attempt to gather statistics on the per capita expenditures of the states for education—would sharpen the entering wedge for complete government control of education” (1965, 13). Opposition to the original office resulted in its receiving a tiny initial budget and a staff of only six, and these were expanded only slowly and amid much political infighting. The federal role in education increased in 1917 with the passage of the Smith-Hughes Act, which provided the first annual federal appropriation for K–12 schooling for vocational education programs. Even as late as the first half of the twentieth century, however, the nation’s school system remained extremely decentralized. The day-to-day management of schools—including such matters as personnel, curriculum, and pedagogy—remained in the hands of local authorities, with state and federal governments having little influence.

EXPANSION: ESEA, GRANT-IN-AID CONDITIONS, AND CATEGORICAL COMPLIANCE

In the 1950s, growing elite concerns around educational equity and economic and military competitiveness led to a more expanded federal role in education. The National Defense Education Act (NDEA) of 1958 and the Elementary and Secondary Education Act of 1965 fundamentally expanded and transformed the federal role in schools by providing sustained, large-scale education aid to the states for the first time. The aim of the combination of the NDEA and the ESEA was to dramatically increase federal funding for education, both in absolute terms and as a proportion of total education spending. Even as federal spending and programs in education grew over time, however, the ends and means of federal policy were clearly circumscribed—the national government would limit its efforts to improving educational equity by providing targeted categorical programs and supplemental funding for schools serving high percentages of low-income students.

The creation of federal categorical programs in the NDEA and ESEA required that federal educational institutions shift from what had been largely an information gathering and disseminating role to a more supervisory responsibility in the administration of the new federal funds and programs. This shift necessitated the creation of new federal and state administrative capacities to oversee the administration of the programs and ensure state compliance. State eligibility for federal education funds often depended on state matching funds, central implementing offices, and a variety of statistical data, which necessitated that state education agencies expand their size and activities and become more institutionalized. This was a clear objective of ESEA, as Title V of

the original legislation provided \$25 million over five years for the agencies to build up their administrative capacity so that they would be better equipped to handle their new, federally imposed responsibilities. The result, as Paul Hill notes, was that state education agencies often became so dependent on federal funding and pliable to federal direction that they were effectively “colonized” (2000, 25–26).¹

State education agencies (SEAs)—that had generally been poorly funded and staffed before ESEA—became a crucial partner of the USOE and the key implementing agency for federal education policy. For most of the next thirty years, this was a cooperative and symbiotic relationship, as the federal government depended on SEAs to funnel national grant monies to local school districts. Moreover, the states were thrilled to accept such funds, particularly when not accompanied by federal mandates. However, the federal reliance on state education agencies created the potential for a serious principal-agent challenge for USOE and the department would later struggle to get SEAs to align state priorities and resources with federal educational goals.²

From the start, the USOE faced tremendous challenges in implementing ESEA (Bailey and Mosher 1968). First, the legislation incorporated multiple goals and methods, some of which were incompatible with one another. Second, the original ESEA gave federal administrators few tools to force compliance with federal directives in the use of ESEA funds. (Given the political opposition to federal control in education, it had been impossible to include even the kind of basic requirements that were normally attached to categorical grants in other policy areas such as AFDC.) Third, even if they had been available, for several years after the law’s passage, the USOE was either not inclined or unable to make use of

1. By 1993, state education agencies nationwide relied on federal funds for on average 41 percent of their operating budgets, with the federal share as high as 77 percent in some states.

2. John Nugent notes that “The delegation of authority to another entity to define, fund, or implement a federal policy creates the possibility of principal-agent problems, in which the entity to which authority has been delegated (the agent) uses it in ways not intended by the delegator (the principal). . . . When state governments are invited, induced, or compelled to participate in the implementation of federal policies, their own interests may clash with those embodied in the federal policy” (2009, 176).

such compliance tools. Fourth, lingering opposition to federal control of education ensured that attempts to rigorously administer ESEA would generate a strong political backlash. Finally, the politics and implementation of ESEA were greatly complicated by the addition of new purposes and programs and an increasingly contentious racial politics around school integration in the years after 1965.

Though the goal of ESEA—to improve educational opportunity for the poor—was clear, the legislation was vague on how this goal was to be achieved. The ESEA distributed funds to school districts according to the number of poor children enrolled, but did not specify which services districts should provide to “educationally deprived” children (Jennings 2000, 4). The consequence of ESEA’s initial flexibility was that federal funds were used in a wide variety of ways and for a wide variety of purposes and local districts often diverted funds away from redistributive programs (for a more detailed discussion of the local tendency to shift federal funds, see Peterson, Rabe, and Wong 1986, 136–40). As Hugh Graham observes, “the upshot of all this is that when Title I was implemented, it produced not *a* Title I program, but something more like 30 thousand separate and different Title I programs” (1984, 204). The original ESEA legislation gave the USOE little power to coerce states to comply with federal regulations or goals or to punish states and school districts that failed to do so. The great level of discretion accorded to states and school districts in spending the new federal money ensured that compliance with federal goals was spotty at best. In his examination of the implementation of ESEA, Joel Berke notes that “federal aid is channeled into an existing state political system and pattern of policy, and a blend distilled of federal priorities and the frequently different state priorities emerges. . . . Federal money is a stream that must pass

through a state capitol; at the state level, the federal government is rarely able—through its guidelines and regulations—radically to divert the stream or reverse the current” (1974, 143).

Initially, the USOE relied on the assurances of state education officials that they were in compliance with federal guidelines.³ However, one of the fundamental premises behind the idea of compensatory education, and of ESEA more generally, was that state and local education authorities had failed to ensure equal educational opportunities for their students and that they could not be trusted to do so in the future without federal intervention. The distrust of local education authorities—and mounting evidence that states and localities were diverting federal funds to purposes for which they were not intended—ultimately led Congress and federal bureaucrats to increase the regulation and supervision of federal aid. By the 1970s, the additional resources available to the Office of Education and the agency’s gradual adjustment to its new administrative role led the USOE to more aggressively enforce federal education mandates (Hughes and Hughes 1972, 57). The ongoing consolidation of school districts across the country facilitated this effort as administrative centralization at the state level ultimately made schools more susceptible to federal regulation.⁴

As Frankenberg and Taylor detail elsewhere in this issue, the implementation of ESEA also quickly became enmeshed in the highly charged struggles over integration and busing during the 1960s and 1970s. Although the 1964 Civil Rights Act declared that federal funds could not be allocated to support segregated institutions or programs, it was ESEA funding that became a key carrot (and stick) for federal integration efforts. States that failed to comply with court integration decrees would lose their share of federal education funds, which as noted were very sizable after the creation of

3. The USOE was ill suited to a compliance role—it had long been a small, passive organization that focused on collecting and disseminating statistical data on education and did little else. The result, as John and Anne Hughes note, was that “if USOE had limitations on its policymaking authority and capability—and these have been legion—its ability to enforce its policies has been even more limited. The state agencies and the local districts, by and large, were used to going their own ways, which often meant disregarding federal requirements” (1972, 50).

4. The number of districts declined from approximately 150,000 in 1900 to 15,000 in 1993 (Newman 1994, 166).

ESEA. The original *Brown* decision in 1954, though declaring that states must integrate their public schools, was silent on the crucial issues of when and how this was to be accomplished. The court's 1955 *Brown II* decision declared that integration should proceed "with all deliberate speed," but the Court again declined to set firm deadlines or methods for integration. Recalcitrant states such as Virginia engaged in "massive resistance" and were able to postpone large-scale integration efforts (for more on the Supreme Court's *Brown* and *Brown II* decisions and southern desegregation efforts, see Wilkinson 1978). The initial flexibility and discretion that the Supreme Court accorded state desegregation efforts came to an end, however, with the 1968 *Green v. County School Board of Kent County, Virginia*, case (391 U.S. 430) when the court declared that school boards must develop integration plans that promise "realistically to work now" (for more on the judicial and political context of this period, see Orfield and Eaton 1996; Armor 1995; Wright Edelman 1973).

In response to the decision, lower courts mandated the widespread busing of students and the Department of Health, Education, and Welfare (HEW) ultimately played a central role in forcing southern school districts to desegregate. As Gary Orfield notes in his classic book *The Reconstruction of Southern Education*, the Office of Education initially was hesitant to engage race or desegregation as it tried to preserve cozy relationships with districts and states because they needed their cooperation (Orfield 1969). The Court's 1972 ruling in *Adams v. Richardson* (351 F. Supp. 636, D.C. Cir.), however, forced a reluctant HEW to resume the funding termination process for districts that had not desegregated, which was the final straw that led many districts to comply.⁵

In the 1980s, John Chubb would note that "in federal programs that are not explicitly regulatory, as well as those that are, policy has come to be carried out by increasingly detailed, prescriptive, legalistic, and authoritative means" (1985, 287). Between 1964 and 1976, for example, the number of pages of federal legislation affecting education increased from

eighty to 360, and the number of federal regulations increased from ninety-two in 1965 to nearly one thousand in 1977 (Ravitch 1983, 312). The lack of consensus on the goals of public education and how to measure the effectiveness of school reform efforts, however, led federal administrators to focus on school districts' spending patterns and administrative compliance. The result of this shift was that large numbers of bureaucratic regulations were created during the 1970s without any kind of concomitant focus on student or school results—everything was judged by procedure and process. Federal spending on elementary and secondary education, meanwhile, continued to grow, increasing more than tenfold between 1958 and 1980, from \$651 million to \$9.5 billion in constant dollars. During the same period, the federal share of total K–12 education spending expanded from 4.4 percent to about 10 percent of total school funding; it has hovered in the 6 to 12 percent range since (NCES 2014, table 235.10).

Strong institutional and ideological obstacles to an expansion of federal influence in education persisted long after the passage of ESEA in 1965 and a bipartisan consensus of sorts developed around these limits imposed on the federal role. National administrative authority in education was severely fragmented, with operational authority for federal categorical programs dispersed across a number of federal agencies, including Defense, Labor, and Health, Education, and Welfare. Liberals, meanwhile, fought to keep the federal role redistributive and focused on disadvantaged students. In addition, because of their alliance with teachers' unions and the belief that inadequate school resources were the primary problem, Democrats also sought to keep the federal role centered on school inputs rather than on outputs or curricular or governance issues. Conservatives, however, were willing to tolerate a small federal role in education, as long as it was unobtrusive and did not threaten local control over schools. These structural and political constraints produced a strange dynamic in which the increase in federal education spending and pro-

5. I would like to thank Doug Reed for bringing this point to my attention.

grams was not accompanied by a comparable strengthening of national administrative power over core school governance issues, or by expanded influence over state school improvement efforts.

INSTITUTIONALIZATION: THE CREATION OF THE DEPARTMENT OF EDUCATION

As the quantity and size of federal education programs grew in the wake of ESEA, calls from some quarters were heard to consolidate national administrative capacity in the form of a single-cabinet level agency. Although legislation to create a new federal department for education had been introduced 130 times between 1908 and 1975, the idea had always generated a great deal of political opposition from a variety of interests that had a stake in preserving the status quo (Stallings 2002, 677). Small government conservatives opposed the idea because it would expand the size of the federal bureaucracy and the power of the federal government, which they were committed to rolling back. Moreover, state rights advocates believed that education was a state and local responsibility and that any federal role would be intrusive and counterproductive (Stephens 1984, 651).

The primary goal of the advocates who fought to create the ED was to protect and expand federal education spending and programs, rather than to build an organization that could pressure states to reform their school systems. President Carter led the successful effort to create the department in 1980, fulfilling an earlier campaign promise he had made to win the first presidential endorsement of the National Education Association. That Congress viewed ED largely as a clientele agency was manifest in the legislation itself and the way in which the department was structured, staffed, and empowered. Congress limited the managerial flexibility of the depart-

ment's leadership by embedding a detailed organizational structure in the authorizing legislation. This was somewhat unusual and was to have important consequences; as one observer noted, "unlike many reorganization efforts, most decisions concerning the ED reorganization structure were made in the adoption stage of the policy process by Congress" (Radin and Hawley 1988, 176).

In *The Politics of Federal Reorganization: Creating the Department of Education*, Beryl Radin and Willis Hawley observe that the political compromises in the drafting of the authorizing legislation limited the flexibility and resources accorded to the department's leadership and diluted the effectiveness of the new department in the short term. The practical task of merging a large number of programs with their disparate organizational structures, cultures, and procedures would take time and meant that "true" reorganization of the executive department would take many years. From the very beginning, the administrative functions of the department were underfunded and understaffed and these issues persisted as the number and size of federal education programs grew over time. This reflected the vision of ED as a mere grant-making and information-gathering organization, rather than one charged with pushing states to embrace school reform (1988, 188). The new department also needed to adapt to the demands of rigorous oversight. Protective of certain Education Department programs and staff, members of Congress were quite willing to intervene to protect them, which limited the managerial flexibility of the secretary even further (Balogh et al. 2002).⁶

When Carter was defeated in the 1980 presidential election (shortly after the department was created), the Department of Education lost its most powerful proponent. President Carter's successor, Republican Ronald Reagan, announced his desire to abolish the department entirely and secured the passage of the 1981

6. Shirley Hufstедler quoted Reagan on this point: "with respect to one man on the Hill, if I didn't call him up on Wednesday and wish him a happy Thursday, he would be petulant and would give me trouble on some aspects of departmental work. In terms of turf, there are projects that are protected either by staff or by a congressman or by a senator. They believe they own those programs and if you try to do something that you think is important to change the priorities of the department, they are all over you like a nest of bees" (1990, 66-67).

Education Consolidation and Improvement Act (ECIA), which dramatically reduced its size and power.⁷ Although Reagan's efforts to disband the department were ultimately unsuccessful, the attacks succeeded in substantially reducing its staffing and budget and its regulatory authority, thereby further limiting its ability to promote educational coordination or improvement. Some scholars have estimated that the number of regulatory mandates imposed on states through federal education programs was reduced by 85 percent during the Reagan administration (Glendening and Reeves 1984, 243). The budget for the Department of Education was cut by 11 percent between fiscal year (FY) 1981 and FY1988 (in real dollars), and the National Institute of Education (the federal educational research and development body) lost 70 percent of its funding during the period (Verstegen and Clark 1988, 137). As Maris Vinovskis notes, these reductions significantly reduced the number and quality of program evaluations within the department and thus made it more difficult for the agency to gauge the effectiveness of its educational improvement efforts (1999). Moreover, the assault on the department's legitimacy occupied the time and energies of both policymakers within the department and of its supporters in Congress. Consequently, the new department and its allies were preoccupied with its survival rather than on the difficult task of adapting the organization to its new responsibilities.

The 1980s thus witnessed two contradictory trends in national administrative power in education. On one hand, the opening of a cabinet-level national Department of Education in 1980 represented the expansion and institutionalization of federal authority over public schools. On the other hand, however, this expansion was not accompanied by an increase in the administrative capacity or political will that would

have enabled the ED to hold states accountable for the outputs of their school systems or to force them to adopt major reforms. By 1980, federal spending and influence on schooling had expanded dramatically and the new Department of Education administered approximately five hundred federal education programs.⁸ As federal spending at the state and local level increased, however, federal funding for the operations of the Department of Education did not increase even close to proportionally. As a result, the department has been tasked with overseeing a growing enterprise, but has been specifically hamstrung by Congress to prevent it from engaging in that oversight with rigor.⁹ Between 1965 and 2010, the budget for the department increased from \$1.5 billion to about \$60 billion, an increase of forty times, yet the number of department employees overseeing those funds barely doubled, from 2,100 to 4,300 (U.S. Department of Education 2010). In 2012, the Department of Education had the third largest discretionary budget of the fifteen federal cabinet agencies but the smallest staff (U.S. Department of Education 2012).

In addition, the federal focus remained on access and equity issues rather than on improving schools' or students' academic performance and little effort was made to measure the educational progress of students that received federal funds or protection. This became increasingly problematic as a number of prominent studies were released that found that ESEA funds and programs had largely failed to improve educational opportunity for disadvantaged students (see, for example, those by Bailey and Mosher 1968; Berke and Kirst 1972; Berke 1974; McLaughlin 1975; Thomas 1975; and Jeffrey 1976). Berke and Kirst, for example, analyzed data from more than five hundred school districts and concluded that ESEA aid had done little to redress

7. The 1980 Republican platform called for "deregulation by the federal government of public education and . . . the elimination of the federal Department of Education." The platform fretted that "parents are losing control of their children's schooling" and that Democratic education policy had produced "huge new bureaucracies to misspend our taxes" (CQ Press 1981, 583-84).

8. For an extended discussion of the expansion of federal compensatory education programs and the accompanying increase in federal education regulations, see Peterson 1983.

9. I would like to thank Doug Reed for encouraging me to explore this dynamic further.

the large inequality in per-pupil expenditures between rich and poor districts.¹⁰ In addition, because ESEA was premised on the provision of additional resources, rather than the promotion of school reform, federal education aid generally went to support existing state and local programs. Over time, this approach came under fire, as the additional resources failed to generate either new reform approaches or improvement in student achievement.

The creation of a national department of education and the release of the widely discussed *A Nation at Risk* report (which the department commissioned) in 1983, created the potential for a reconfiguration and expansion of the federal role in school reform. Nonetheless, the new administrative capacity that the creation of the Department of Education was intended to provide did not develop during the 1980s because of the control of the executive branch (and for part of the time Congress) by a Republican party that was extremely hostile to increasing federal power over schools. The same political dynamics redirected the national momentum generated by *A Nation at Risk* to advancing state school reform efforts, despite the report's call for a more robust federal role.

REDIRECTION: NEW FOCUS ON STANDARDS AND ACCOUNTABILITY

The election of a Democratic president and a Democratic Congress in 1994 created a political environment more favorable to an expansion of federal education policy. In the 1994 ESEA reauthorization, President Clinton—a former “education governor” and “New Democrat”—secured changes that would push states to increase performance reporting and embrace educational accountability. Under this new ESEA and a companion piece of legislation, Goals 2000, states were required to establish academic standards in each grade and create tests to assess whether students had

mastered the standards. The tests were to be administered to all poor children at least once in grades three through five, six through nine, and ten through twelve. Enforcement by the Department of Education was lax, however, in that Democrats were opposed to withholding funds from state education systems and Republicans resisted federal micromanagement of states. In the end, most states failed to comply: as late as 2002, two years after the target date for full compliance, just sixteen states had fully complied with even the central components of the 1994 law. Meanwhile, on the heels of the passage of the 1994 ESEA reauthorization, Republicans won control of both the House and Senate for the first time in decades—partly on the strength of their “Contract with America” and its call to roll back the expanse and power of the federal government. Republicans used their control of Congress—and of the appropriations for the ED—to undermine the ED's ability to pressure states on school reform. During the next ESEA reauthorization debate in 1999, conservative Republicans in Congress introduced the Academic Achievement for All Act (“Straight A's”), which sought to reduce federal influence by combining most federal education programs into block grants.

ENFORCEMENT: NCLB AND THE NEW MISSION OF THE DEPARTMENT OF EDUCATION

The previous discussion demonstrates that the ED has historically been unable or unwilling to use federal education dollars as leverage to force systemic change in state education systems (with the notable exception of ending de jure segregation). The ED lacked the combination of three resources essential to undertaking such an effort—statutory authority, administrative capacity, and political will. The passage of the No Child Left Behind Act in 2001 fundamentally expanded and redirected fed-

10. It found that though Title I—which was explicitly focused on disadvantaged students—had a somewhat redistributive effect, this was erased by the effects of the other titles of ESEA and vocational aid, which went disproportionately to wealthier districts. By dispersing ESEA funds widely across school districts, not only was federal assistance poorly targeted to its intended beneficiaries, but the additional resources that came to any particular school were limited (Berke and Kirst 1972, 45).

eral education policy. Furthermore, it placed the ED at the center of a bipartisan effort to use federal education spending to pressure states to embrace test-based accountability and introduce a host of reforms to reduce racial and socioeconomic achievement gaps. Although the 1994 Goals 2000 and the Improving America's Schools Act reforms put in place much of the statutory scaffolding for a shift in federal policy, the ED lacked the administrative capacity and political will to enforce the law's mandates vigorously.

NCLB requires states to create accountability systems, annually test children in reading and math in grades three through eight (and once in high school), identify proficient students as well as schools where an insufficient number of students were proficient, ensure that specified measures were taken with regard to schools that failed to make adequate yearly progress (AYP), and set targets that would ensure that 100 percent of children were proficient in reading and math by 2014. One of the most important mandates in the law is that school report cards must disaggregate student test score data for subgroups based on race and ethnicity, economically disadvantaged status, limited English proficiency, and classification as in need of special education. Crucially and controversially, a school that does not meet the proficiency target for any one of these groups is placed in "in need of improvement status" and states are required to take an escalating series of steps and interventions (including the offering of public school choice, tutoring, technical assistance, and restructuring) aimed at schools and districts that persistently fail to meet AYP targets.

The scope, specificity, and ambition of the law's mandates signaled something akin to a revolution in federal education policy. As written, however, the NCLB legislation was a complex mix of federal mandates and state discretion—although states are required to put standards and tests in place and create a system for dealing with failing schools, they are also entrusted with setting the rigor of these. Given these cross-cutting currents, much would depend on the way in which the law was implemented by the Bush Department of Education, and how the department handled

states' requests for flexibility, extensions, and waivers. On this count, states hoped that the administration would be as amenable as the Clinton administration had proved to be in implementing the 1994 legislation. Deeming it the most promising path to deliver the cultural shift in schooling it sought, the Bush administration took a hard line and pushed states to comply with the letter of the law. Although this forced states to take the law's mandates more seriously than they otherwise would have, it unsurprisingly sparked vocal complaints among educators, who argued that the law's goals and timetables were unrealistic and that the resources and guidance provided were insufficient.

One awkward question was how the Bush administration would respond to states that pushed back against the law's requirements in the name of federalism. The administration faced a thorny choice: acquiescing and accepting the efforts to undercut the reach of NCLB or aggressively challenging states that threatened to forfeit federal dollars in order to opt out of the NCLB regime. In a decision that caused consternation among conservatives concerned about federal overreach and the integrity of federalism, the administration opted to use every tool at its disposal to keep states in line. Given the noble promise of NCLB's pledge that every child would be proficient in reading and math by 2014, along with its belief that allowing states to backslide would launch the nation on a slippery slope and undercut its effort to transform the culture of schooling, the administration successfully brought substantial pressure to bear when Utah and Connecticut publicly challenged NCLB.

The aggressive implementation approach of the Bush administration Department of Education succeeded in getting states to comply with federal mandates and intervene to a greater extent than ever before in districts with failing schools. As Phyllis McClure, a long-time member of the Title I Independent Review Panel observes, "NCLB has grabbed the education community's attention like no previous ESEA reauthorization. It has really upset the status quo in state and local offices. . . . For the first time, district and school officials are actually being required to take serious and urgent ac-

tion in return for federal dollars” (2004). NCLB’s requirement that states conduct annual testing and report student scores forced states to build new data gathering and dissemination systems and resulted in a greater degree of transparency in public education than ever before. Scholars Tiffany Berry and Rebecca Eddy write that the law has “transformed the landscape of educational evaluation” and is “redefining what evaluation is within the education evaluation community” (2008, 2). By holding states clearly accountable for the performance of their public schools, NCLB has also prompted state departments of education to expand their capacity to monitor local districts, provide technical assistance, and intervene where necessary (see Hess and Finn 2007).

The major policy shifts imbedded in NCLB necessitated a corresponding shift in the structure, staffing, and operations of the ED, which is charged with implementing the law. In particular, NCLB’s new focus on raising student achievement necessitated that the department develop new research capacities that could permit the effective monitoring of state compliance, the implementation of new longitudinal student data systems, and the identification of effective classroom interventions (McGuinn, Berger, and Anderson 2012). The Institute of Education Sciences (IES) was created by the Education Sciences Reform Act of 2002, replacing the Office of Educational Research and Improvement (OERI) and its predecessor the National Institute of Education (NIE), which had been the primary federal education research institutions since 1972. The methodology and quality of the research studies funded by OERI and NIE was widely criticized and they were generally seen as exerting little if any influence on state education policies or classroom practice. In response, IES adopted a new strategy of conducting and funding research, which is primarily based on randomized trials that can more precisely measure the effects and effectiveness of state and federal policies (Whitehurst 2003).

Another important arm of the new ED was the Office of Innovation and Improvement, which was created early in President George W. Bush’s first term. According to its website, the OII is “the nimble, entrepreneurial arm of the

U.S. Department of Education. It makes strategic investments in innovative educational practices through two dozen discretionary grant programs and coordinates the public school choice and supplemental educational services provisions of the Elementary and Secondary Education Act as amended by No Child Left Behind” (U.S. Department of Education, n.d.). These institutional changes at ED served a dual purpose. In the short term, they were intended to enable the department to more effectively carry out its new mission of monitoring state compliance with NCLB mandates. In the longer term, however, it was hoped that the reorientation and reorganization of the ED would institutionalize the new, more aggressive federal approach to school reform into the bureaucracy and make it harder for the approach to be undone by subsequent presidential administrations or congressional pressure.

IMPLEMENTATION: STATE EDUCATION AGENCIES

As Sandra Vergari notes, states have rebelled against federal mandates in education and sought to reshape them on the ground (2012). However, NCLB mandates—combined with the rigorous ED enforcement—pushed states to rapidly and fundamentally transform their student testing, data collection, and district monitoring systems. A 2008 RAND study, for example, concluded that “states, districts, and schools have adapted their policies and practices to support the implementation of NCLB” (Stecher et al. 2008, 64). The ED has closely monitored state compliance efforts on both the front end—through the use of detailed accountability plans that each state must submit for review—and on the back end, through regular state reporting and federal audits (for more information on the ED review process for state accountability plans, see GAO 2009). The ED’s Office of Inspector General has conducted audits of state policies and their compliance with NCLB mandates and demanded that states make changes where necessary.

In New Jersey, for example, a federal audit in 2005 criticized the Department of Education for not disseminating state assessment results effectively and for not exerting sufficient oversight of district compliance with either the

choice or Supplemental Educational Services (SES) provisions of NCLB (U.S. Department of Education 2005). The highly critical federal audit was sufficient to generate significant changes in state policies and has led to the creation of a more robust role for the NJ Department of Education in implementing NCLB and providing technical assistance to schools and districts. This vision became the basis for Collaborative Assessment and Planning for Achievement (CAPA) teams, which conduct week-long school reviews in low-performing Abbott and Title I schools (for additional information on the CAPA process, see New Jersey Department of Education 2010). In 2005, the Department of Education's monitoring and evaluation system was completely transformed with the creation of the New Jersey Quality Single Accountability Continuum (NJQSAC) and the development of a statewide student-level database.

This New Jersey example demonstrates the historically unprecedented level of federal monitoring and enforcement activities in state education systems in the wake of NCLB. In implementing NCLB, the Bush administration fundamentally altered the role of the federal Department of Education—shifting it from its historical role as a grant-maker and compliance monitor to a more active (if still relatively toothless) role as a compliance-enforcer and agitator. The administration has emphasized the importance of bottom line results in student achievement, shifting the traditional focus from regulation and process. Despite all of the political controversy surrounding NCLB, one of the enduring legacies of the Bush administration has been the institutionalization of assessment and accountability in education. In this sense, NCLB's influence may ultimately be compared to the original ESEA in 1965—which, for all its flaws and shortcomings, cemented in place a new and substantial federal role in education.

A NEW APPROACH: RACE TO THE TOP AND NCLB WAIVERS

The election of Barack Obama as president in 2008—combined with Democratic control of Congress—gave the Democratic Party an opportunity to assert a new vision of education

reform. Many observers initially assumed that this would lead to a move away from federal school accountability and a reassertion of the traditional liberal focus on school resources, integration, and social welfare programs. Although his administration did in fact offer states waivers from some of NCLB's ambitious accountability requirements, it did so only on the condition that individual states were willing to support key elements of the Obama reform agenda (Cavanaugh 2012). President Obama has also increased the federal role in important ways in calling for the growth of annual testing in ESEA, expanding federal efforts to restructure the worst performing schools, and creating a new focus on innovation, charter schools, and teacher accountability. The centerpiece of the Obama education agenda was the \$4.35 billion Race to the Top (RTT), \$3.5 billion School Improvement Grant (SIG), and \$650 million Investing in Innovation (i3) programs (McGuinn 2012c).

Historically, almost all federal education funds have been distributed through categorical grant programs that allocated money to districts on the basis of need-based formulas. According to this traditional model, states and districts received funding automatically, regardless of the performance of their schools or the promise of their particular school reform policies. Long-standing variation across states and districts in the amount of federal funds received has been due to differences in state educational needs (the number of poor, ESL, or special education students, for example), rather than differences in school policies. The RTT, SIG, and i3 funds, by contrast, were distributed through a competitive grant process in which states and districts were only rewarded for developing school reforms that were in line with federal goals and guidelines. In particular, state applications were graded according to the rigor of the reforms proposed and their compatibility with five administration priorities: the development of common standards and assessments; improving teacher training, evaluation, and retention policies; developing better data systems; the adoption of preferred school turnaround strategies; and building stakeholder support for reform.

ED also established a number of criteria

that states had to meet to even be eligible to apply for the RTT funds. These requirements have had a major effect on state school reform efforts, independent of the specific grant proposals the states have submitted. Among the fourteen criteria for RTT eligibility was that a state did not have a cap on the number of charter schools that are permitted to operate and that it did not have a firewall preventing the linking of student achievement data with individual teacher information. This served to stir the pot politically over school reform as never before, by forcing different interest groups to publicly stake out their positions on the various reform components of RTT in the debate over whether to apply them and under what conditions (McGuinn 2012b). The competition also attracted tremendous media attention to the issue of school reform, shone a bright light on dysfunctional state policies, and helped create new political coalitions at the local and state levels to drive reform. Some evidence indicates, for example, that RTT's emphasis on expanding charter schools and revamping teacher evaluations helped change the political climate around these controversial issues, paving the way for the passage of reform legislation in many states. The Obama administration has initiated a second Race to the Top competition and announced its desire to distribute more federal education funding through competitive grant programs in the future.

In the area of teacher evaluation and compensation, Obama and Duncan have supported their tough talk with some important steps to tie federal funds to significant reform. They have expanded the federal Teacher Incentive Fund, which has distributed resources to experiment with alternative evaluation systems and performance pay systems. So far thirty-four states, districts, and nonprofit groups have received money to develop approaches that use "objective measures" of student performance to compensate the most effective teachers. Most significantly, the Obama administration is leveraging the RTT funds to spur improvements in state teacher data collection and evaluation systems, as well as to link such information to student achievement information. As Stephen Sawchuk notes, "the stimulus application for the first time, sets a

federal definition of teacher effectiveness" and states receiving RTT funds "must commit to using their teacher effectiveness data for everything from evaluating teachers to determining the type of professional development they get, to making decisions about granting tenure and pursuing dismissals" (2009, 1). These changes are pushing states to embrace the types of teacher evaluation, compensation, and tenure reforms that they have long resisted.

NCLB was scheduled to be reauthorized in 2007 but a divided Congress has been unable to agree on the appropriate role of the federal government in education. The law remains in effect, however, and an estimated 48 percent of schools nationwide failed to make AYP and faced NCLB-related penalties in 2011. That year the Obama administration took matters into its own hands by announcing an ESEA flexibility plan that would enable states to apply to the Department of Education for a waiver from NCLB's accountability provisions. In a speech announcing the program, President Obama stated, "I've urged Congress for a while now, let's get a bi-partisan effort to fix this. Congress hasn't been able to do it. So I will. . . . Given that Congress cannot act, I am acting" (quoted in Simendinger 2011, 1).

Secretary Duncan cited his regulatory authority under NCLB—and in particular section 9401 of ESEA—as justification for the waiver program. Most observers agree that he has the authority to issue waivers, but the administration made granting waivers conditional, which is much more controversial and appears to be unprecedented in education. The administration declared that to be eligible to receive a waiver, states must adopt college and career-ready standards (such as the Common Core), develop a plan to identify and improve the bottom 15 percent of schools, and develop teacher and principal evaluation systems "based on multiple valid measures, including student progress over time." As Riley observes, "This proposal . . . takes many of the ideas underlying RTTT [*sic*] and expands their application in order to slay the NCLB zombie" (Riley 2012, 2). Members of Congress criticized the conditional waiver program as essentially using administrative discretion to rewrite the law in violation of the separation of powers. Repre-

sentative John Kline (R-MN), for example, remarked, “In my judgment, he is exercising an authority and power he doesn’t have. We all know the law is broken and need to be changed. But this is part and parcel with the whole picture with this administration: they cannot get their agenda through Congress, so they’re doing it with executive orders and rewriting rules. This is executive overreach” (quoted in Viteritti 2012, 5). The waiver program nonetheless proved irresistible to the forty-five states that applied and received them, eager as they were to escape NCLB’s accountability system even if in exchange for promising to enact several Obama administration reforms. The use of competitive grants and NCLB waivers to drive states’ reform efforts is a new and potentially transformative role for the ED in American education.

THE COMMON CORE EFFORT

Another important recent development has been the effort by the National Governors Association (NGA) and the Council of Chief State School Officers (CCSSO) to develop a “Common Core” of national academic standards and parallel assessments. Earlier efforts to develop national standards and assessments in the United States—such as those by President George H. W. Bush and President Bill Clinton in the 1990s—were met with passionate opposition from across the political spectrum by those who feared federal power in education or the idea of a national curriculum that would overwhelm traditional state prerogatives (for more of the standards-setting effort during this period, see Ravitch 1995). The implementation of NCLB, however, increased the pressure to develop national standards and assessments, as states used their discretion in this area to manipulate the accountability system by lowering their standards, making their tests easier, or decreasing their proficiency cut scores. Such actions were widely criticized for dumbing down the curriculum and undermining the law’s school accountability system. The result was that school reformers from across the political spectrum came to see the creation of common standards and assessments—and the increased accuracy and transparency they would bring to school performance—as an es-

sential part of the effort to improve schools going forward (Busyh and Klein 2011).

In the wake of the many centralizing and coercive NCLB mandates, however, concerns regarding federal authority had only increased and this led to the mantra that common standards and assessments should be “national, not federal” (Heise 2006). In July 2009, the NGA and CCSSO created a task force comprising representatives from higher education, K–12 education, and the research community and released standards in language arts and mathematics in June 2010. Given the voluntary nature of this approach, each state must make its own decision about whether to adopt the common core, and thereby substitute the national standards and assessments for the state’s own. By encouraging states to sign on as part of their RTT applications, the Obama administration was able to get forty-eight states to pledge to sign on to the Common Core Standards Initiative (only Alaska and Texas declined to participate). Moreover, as of July 2012, forty-five states had gone further and formally adopted the common standards to replace their own state standards. (The Common Core encountered mounting political opposition in 2014 and 2015, however, with several states dropping the standards and others contemplating doing so.) In addition, three consortia competed for the \$350 million in RTT funding provided by the Department of Education to develop next-generation assessments. Timothy Conlan and Paul Posner see RTT and the common core approach as part of the Obama administration’s “hybrid model of federal policy innovation and leadership, which mixes money, mandates, and flexibility in new and distinctive ways. . . . The model represents a blend of, but is different from, both cooperative and coercive federalism” (2011, 443–444).

The Department of Education—like many state education agencies—is also shifting from primarily administering grants and monitoring compliance to focusing more on supporting school improvement efforts. It worked closely with states that received RTT grants through what is called a Reform Support Network, which aims to build capacity to implement and sustain their reform efforts, particularly around adopting high-quality standards

and assessments, developing effective data systems, recruiting and retaining great teachers and leaders, and turning around the lowest-performing schools. And, in October 2014, the department announced a major reorganization that includes a new Office of State Support that will consolidate a variety of offices to better provide technical assistance to states with their school improvement work.

CONCLUSION

American K–12 education has undergone a significant transformation since the passage of the ESEA in 1965 as increasingly ambitious federal policies push states to embrace a school reform paradigm centered around standards, testing, accountability, and choice. As the main interpreter and implementer of federal education policy, the Department of Education has played a crucial (if underexplored) role in this transformation. A larger federal role in education—and increased administrative capacity—may very well not lead to better educational outcomes. If federal education policies are misguided—or if a more active ED uses its authority in counterproductive ways—then student learning may remain stagnant or even decline.

Federalism, and the lack of national constitutional authority to directly impose school reform on the states, has greatly complicated American politics and policymaking in education because it has forced the federal government to pursue its goals for school reform indirectly—through the grant in aid system and state education agencies. The intergovernmental relationship in education in the United States in the contemporary era is both cooperative and coercive—a duality that makes it complex and contingent on broader political forces. The relationship has a cooperative element because the department must rely on state education agencies as a conduit for federal education spending and as the implementer of federal policies on the ground in school districts. It is also coercive, however, because federal spending and policies have increasingly been used to push states to undertake politically unpopular changes they likely would not have undertaken in the absence of federal pressure. For the ED to be effective in

gaining state compliance with federal education policies, it needs adequate statutory authority, administrative capacity, and political support. However, throughout most of the thirty-five year history of the department, these resources have been lacking.

The 2001 No Child Left Behind Act represented a major shift in ESEA and an ambitious and controversial expansion of federal power over an educational system that has long been based on the principle of local control. With its prescriptive mandates, timetables, and aggressive enforcement, NCLB represents nothing less than a transformative shift in educational governance in the United States. However, the ultimate impact of the law—as well as recent Obama initiatives, such as Race to the Top and the Common Core—on schools is contingent on ongoing efforts to restructure state and federal departments of education to expand their administrative capacity and reconfigure intergovernmental relationships to adapt to the new demands placed on them. The Bush and Obama administrations initiated an unprecedented effort to empower and reorient the Department of Education to pressure states to embrace federal school assessment and accountability mandates and to support their preferred reform strategies.

Nonetheless, ongoing administrative capacity deficits within federal, state, and local education departments present a formidable challenge to the current ambitious education reform agenda. The ED has long lacked the staff, resources, and technical expertise to provide sustained supervision and guidance of state compliance with federal education programs. Although its programs and grant expenditures have grown dramatically in the past thirty years, the department itself has not. As its website notes, “In fact, with a planned fiscal year 2010 level of 4,199, ED’s staff is 44 percent below the 7,528 employees who administered Federal education programs in several different agencies in 1980, when the Department was created” (U.S. Department of Education 2012). Ironically then, the department’s push to expand states’ administrative capacity to implement education reform may ultimately be undone by the lack of adequate administrative capacity at the federal level.

And as states have struggled to meet NCLB's ambitious goals and chafed at the reforms rewarded by RTT, some of the initial philosophical reservations within the Democratic and Republican Parties regarding the new federal emphasis on testing and accountability have come storming back to the surface. Many Republicans resent the coerciveness of the new federal role, while many Democrats are concerned about the impact of standardized testing on instruction and teacher evaluation and the focus on schools over broader economic and social change (McGuinn 2012a). The November 2014 elections resulted in Republican control of both chambers of Congress, and the party has pledged to reduce federal activism in a variety of policy areas, including and especially in education. Led by Senator Lamar Alexander (TN), a former secretary of education, Republicans are pushing the long overdue congressional reauthorization of NCLB and early signs indicate that they will attempt to roll back the law's federal accountability provisions as well as rein in the authority of the ED. Republican presidential candidates campaigning in advance of the 2016 election have likewise indicated they would act vigorously to reduce federal authority over public education if elected, with several going so far as to call for the outright elimination of the ED. While the latter appears unlikely to occur and the outcome of the ESEA reauthorization remains unclear, it is possible that we may well have witnessed the apogee of federal power in education. Even if true, ESEA and federal policy—and the way in which it was implemented by the ED—will have left an enormous legacy for education in the United States by pushing states to reorient their school systems around the principles of standards, assessment, accountability, and choice.

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