

# Federal Education Policy and the States, 1945-2009: A Brief Synopsis

States' Impact on Federal Education Policy Project  
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### ***Preface***

During the past half century, federal education policy has played an increasingly critical role in determining what happens in American classrooms—and ultimately in the minds and hearts of American students. As historians, policymakers, commentators, and citizens explore the development of federal education policy during this era of complex and dynamic change, important questions arise regarding the actions of states, on their own and in coalitions with other states, as they attempt to shape and respond to federal policy.

Reliable answers to these questions can be found only through research in the archival record—specifically, by reviewing the original documents, which reveal what the key players were thinking, saying, and doing.<sup>1</sup> Yet a comprehensive documentary record of this topic does not yet exist as an available resource. Many of the relevant records are in archives or records storage facilities but are not yet accessible for research; many others are still in the offices and homes of their creators.

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<sup>1</sup> Correspondence between important figures, early drafts of legislation or policy, unpublished documents that formulate positions, meeting minutes, financial records, oral histories of key players—these are the kinds of records that must be preserved and made accessible.

In 2003, the New York State Archives launched the States' Impact on Federal Education Policy Project ([SIFEPP](#)), to create a continually growing public resource of archival and published materials on the role of states in shaping federal education policy since the mid-twentieth century. The project provides access to—and, in some cases, expands upon—relevant holdings in the New York State Archives, other state archives, and archival institutions throughout the United States, including the National Archives. An Internet gateway provides electronic access to information about these materials.<sup>2</sup>

### **Purposes and Audience**

Drawing on secondary sources and the personal knowledge of the SIFEPP advisors, this introductory essay is intended to achieve the following three purposes:

- To provide for archivists in the project, or otherwise working with education policy-related records, a broad historical overview that describes the field's key developments, events, issues, organizations, and individuals. This background helps archivists, who are usually not expert in education policy, to search for relevant records and assess the records they find.
- To help records holders and education professionals understand the relevance of their records and their work within the overall history of education policy.
- To be a resource for teachers, students, policymakers, and others engaged with education who may not be familiar with the history of education policy.

### **Focus and Limitations**

It is important for readers to understand what this essay is and what it is not.

- This essay does not strive to review the entire history of education policy. It is far too brief to take on such a vast topic.
- It is also not an interpretive work of original scholarship that argues a thesis about the evolution of education policy. Although a certain degree of bias is inevitable in any narrative, this essay aims for a relatively objective recounting of events and issues.
- The essay is weighted toward the actions of the executive branch and, broadly, on legislation passed by Congress. It does not generally address the actions and motivations of individual legislators. Similarly, while the essay addresses a few critical court cases that have profoundly affected federal education policy, it does not address the many state cases that contributed to the development of federal policy or responded to its implementation. (Because court cases are relatively well documented in the public record, the project's documentation efforts are also focusing more on executive and legislative records.)
- The focus of the project is the impact of states on the shaping of federal policy, not the impact of federal policy on the states. We recognize that policy development involves an ongoing cyclical exchange between states and the federal government, State policy—or the absence of it—stimulates federal policy; federal policy is implemented in states; the states and other interested constituencies then assess the policy and respond, leading to

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<sup>2</sup> For more information about the project, visit <http://www.sifepp.nysed.gov/>.

the next reshaping of federal policy. The project is concentrating on the state-to-federal vector, both because this aspect appears to be poorly documented and because it is a manageable segment.

### **Project and Essay Framework**

Education policy is a broad topic that could be subdivided in numerous ways. The project staff and advisors have identified thirteen major subtopics that have been subjects of federal policymaking over the past half century:

- States' advocacy on federal education policy
- Standards, assessments, and accountability
- Economically disadvantaged students-Title I
- Students with disabilities
- Bilingual education
- Equal educational opportunities for women and girls
- School desegregation
- Early childhood education
- Workforce preparation
- Learning technologies
- School financing: court cases
- Governance and organization
- International dimensions

(For a version of this list that includes major federal actions associated with each topic, visit the [SIFEPP website](#).)<sup>3</sup>

The project's documentation efforts are concentrating initially on the first three subtopics and will address the others over time. (In many cases, organizations and individuals engaged in the first three areas have been active in other areas as well, so the documentation process will in effect be working on all fronts, though not at first with equal emphasis.) The essay is not structured around these subtopics, but they do inform its content.

Presidential administrations define the sections within the chronological flow of the essay. Although milestones in education policy do not always correspond with changes in administration, each new administration does bring a new cast of characters to both executive and legislative positions, and education-related entities may be created, restructured, redirected, or eliminated in the political transition. Therefore, the transition in national political leadership provides an appropriate structure within which to view the profoundly political process of education policy formation. (See a [chronology](#) of key developments in education policy since 1944.)<sup>4</sup>

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<sup>3</sup> See Research at [www.sifepp.nysed.gov](http://www.sifepp.nysed.gov).

<sup>4</sup> See Research at [www.sifepp.nysed.gov](http://www.sifepp.nysed.gov).

## Political Snapshots

At the beginning of the narrative for each administration, in the section entitled “Policymakers,” we have described the basic political context within which education policymaking took place. These snapshots include important policy actions, the makeup of Congress, relevant administration officials, key congressional leaders (with their state affiliations), and so on. If you choose to download or print the essay, you may wish to do the same with the [Policymakers](#) PDF version,<sup>5</sup> which includes all the snapshots at a glance.

## Mechanisms of State Impact on Federal Policy

When reviewing this essay, readers may want to keep in mind the principal mechanisms by which states influence federal education policy:

- **States as models.** The U.S. government models federal policy on the states' successes. During the 1960s, for example, federal policymakers sought to increase equity in education by extending New York and Massachusetts policies to the rest of the nation.
- **States as failures.** Perceived failures of the states to create and implement adequate education policy have propelled a great deal of federal action—for example, the Elementary and Secondary Education Act (ESEA) of 1965.
- **States as advocates.** State governments, usually education departments, actively lobby the federal government on policy issues.
- **Congressional initiatives.** Legislators band together (independent of state education officials) to promote policy or obtain federal education money. These initiatives may represent a response to political opportunities or components of unrelated deals.
- **State responses to federal policy.** Sometimes this response takes the form of resistance, as with desegregation and other civil rights issues. State responses to particular first-generation policies may yield modifications in the second generation.
- **State-federal negotiation.** New education policy often results from state-federal negotiation surrounding the perceived successes or failures of existing federal policy. Reauthorizations of ESEA are a case in point.
- **Personnel shifts.** When leaders and mid-level managers move from state to national positions, they often use their experience from their states to influence federal policy.

For more information about the development of federal education policy—and the effect of states thereon—we invite you to explore the [SIFEPP website](#).

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<sup>5</sup> See Historical Overview in Research at [www.sifepp.nysed.gov](http://www.sifepp.nysed.gov)

## **Introduction**

Virtually every study of the federal role in American education begins with the qualifying statement: education in the United States is chiefly a matter of state and local responsibility. This statement is certainly true . . . as far as it goes. Education *is* a state and local responsibility, both legally (every state constitution guarantees its citizens' right to education, while the U.S. Constitution does not explicitly mention education at all) and financially (state and local expenditures cover approximately 92 percent of school costs on average, while the federal budget covers only 8 percent—though, in some large urban districts, federal aid covers as much as 30 or 40 percent of local school costs). Yet, even if public education is chiefly a matter of state and local responsibility, the federal role in American schools has grown exponentially in the period since the mid-twentieth century, and state-federal interactions in the realm of education policy have become increasingly complex as a result.

It is important to note at the outset that, while the federal role in education has expanded rapidly since World War II, the basic idea of federal aid to education is, in fact, nearly as old as the republic itself. In 1785, two years after the end of the Revolutionary War, the Congress of Confederation passed the first of two Northwest Ordinances, which reserved 1/36<sup>th</sup> of the land allocated to each western township “for the maintenance of public schools within the said township.” Two years later, in 1787, the recently convened Constitutional Convention passed the second Northwest Ordinance, which reaffirmed the purpose of the first. However, since the Convention left all explicit mention of education out of the new Constitution itself, some have speculated that it saw schooling exclusively as a state or local issue—left, under the Tenth Amendment, as an unenumerated power reserved “to the states . . . or to the people.”

Yet the use of federal land grants to support education continued during the Civil War, when Congress passed the Morrill Land Grant Act of 1862. This act extended the aims of the Northwest Ordinances (land grants for school aid) to institutions of higher education. Then, after the war, the federal government moved beyond the basic idea of land grants and devoted significant resources from the federal treasury to support the so-called Freedmen's Bureau, which tackled, among many other challenges, the huge task of improving educational opportunities for recently emancipated slaves. The Freedmen's Bureau initiated three areas of federal aid to education that would last into the twentieth century: (1) offering federal aid to raise the educational level of the most disadvantaged members of society, (2) promoting economic (or “manpower”) development through the expansion of access to learning, and (3) assimilating new citizens into American society for purposes of productive labor as well as social harmony. In 1867, Congress established the U.S. Office of Education (albeit with very limited powers) to monitor the nation's progress in some of these areas.

As the Civil War showed, wars often provide the impetus for expanding federal aid to education—owing not only to the broad exercise of federal power during wartime but also to the awareness of gaps in labor capacity that war reveals. In 1917, for example, the demands of World War I led to the passage of the Smith-Hughes Act, which promoted vocational-technical education and other forms of school-based job-training in various locales throughout the country. The post-World War I era also saw the expansion of small-scale federal grants for educating veterans and the disabled, including P.L. 66-236 (1920), an act to provide vocational

rehabilitation for industrial workers disabled on the job. Federally funded services for the deaf and blind also grew in the 1920s and 1930s. P.L. 74-139 (1935), to choose one example, increased annual appropriations for books for the visually impaired.

Some have argued that aid to education falls in periods of economic weakness, but, during the Great Depression, the needs of both disabled and disadvantaged pupils received increased attention. It is true that, in 1936, 1937, 1938, and 1939, “general aid to education” bills (the Harrison-Fletcher bill, Harrison-Thomas bill, Thomas-Harrison-Larrabee bill, and others) were repeatedly introduced—and defeated, owing to objections that schools must remain a state responsibility. In 1935, however, Congress created the National Youth Administration (NYA) and the Works Progress Administration (WPA), both of which expanded federally funded job training and skills development programs.<sup>6</sup> Moreover, the Agricultural Adjustment Act (P.L. 74-320) authorized the Department of Agriculture to purchase surplus food for distribution to non-profit school lunch programs. In 1940, this law was amended to include a school milk program, and, in 1946, several related food-commodity laws were consolidated to provide free meals to low-income children under the National School Lunch Act.

Both the New Deal and World War II contributed dramatically to the size as well as the scope of federal activities. The 1940s in particular brought significant increases in federal aid to education. In 1940, Congress passed the Lanham Act, which supported the construction, operation, and maintenance of school buildings for children whose parents were employed by the federal government (primarily on military bases). This law set at least two key precedents. First, it laid the foundation for aid to federal “impact” areas—aid that was later expanded under P.L. 81-815 and 81-874, both of which passed in 1950; these laws offered general, largely unregulated financial aid to replace local property tax revenues lost on federally controlled lands. Second, and less-often noticed, the Lanham Act provided federal aid for nursery schools and day care for mothers involved in the war effort; in this way, it established funding for pre-school education as a legitimate federal concern (though, in later years, as critics pushed to return educational responsibilities to the states, the idea of federal aid to early childhood education became harder and harder to sustain).

In 1944, Congress passed the biggest package of federal aid to education to date: the Serviceman’s Readjustment Act, commonly known as the G.I. Bill of Rights (P.L. 78-346). This law entitled veterans who had served at least ninety days in the armed forces to a year of secondary, special, adult, or college education, plus an additional month of education for each month in the service, up to a total of 48 months. Veterans received \$500 in federal aid per year—paid directly to approved institutions of their choice—and they were free to use this money to cover tuition, books, supplies, and all applicable fees. They also received a monthly living allowance. After the war, the G.I. Bill and federal aid to “impact” areas became the largest sources of federal support for education. Both programs were extremely popular among local administrators, because they distributed loosely regulated grants that could be used to meet virtually any need.<sup>7</sup>

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<sup>6</sup> See, for example, James T. Patterson, *The New Deal and the States: Federalism in Transition* (Princeton: Princeton University Press, 1969).

<sup>7</sup> See Keith W. Olson, *The GI Bill, the Veterans, and the Colleges* (Lexington: University Press of Kentucky, 1974).

After World War II, the political climate for such aid changed. Local willingness to accept federal aid gave way to local fears of “federal control.” In 1948, representative Graham Barden (D-NC) introduced a bill to provide “general aid” to public schools, but it failed after opponents raised the specter of “communistic” federal involvement in local schools as well as the prospect of federal aid going to parochial schools. Indeed, a highly publicized confrontation in New York between former First Lady Eleanor Roosevelt and Roman Catholic leader Francis Cardinal Spellman ultimately killed Barden’s bill in 1949. At the height of the controversy, General Dwight D. Eisenhower wrote from his post as president of Columbia University in New York to denounce federal intrusion into public schools, commenting in typical cold war rhetoric that, “unless we are careful, even the great and necessary educational processes in our country will become yet another vehicle by which the believers in paternalism, if not outright socialism, will gain still additional power for the central government.”<sup>8</sup>

In retrospect, Eisenhower’s comment appeared ironic, because his administration as president saw the most rapid expansion of federal aid to education to date, and nearly every administration after his—both Republican and Democratic—expanded the federal role in education. It will be useful, therefore, to survey the proposals of each succeeding presidential administration, examining the political, social, and ideological context that shaped its approach to education and identifying the most important legislation that arose in each period. Of course, each new piece of education-related legislation had its origins in the work of particular members of Congress, and these members of Congress, in turn, derived many of their ideas from local constituents in states throughout the country. In fact, the best way to understand the development of education policy at the federal level is often to study local issues in the states and districts of the senators and representatives who push particular bills or who hold leadership roles on key congressional committees responsible for education. As policy analyst Christopher Cross has observed, “Federal policy often follows state/local action.”<sup>9</sup>

In some cases, an innovative state-level program can serve as the model for a new federal program. In other cases, states and localities have jointly advocated for federal action where a nationwide educational need was most efficiently addressed at the federal level. In still other cases, state-level *resistance* to federal action or a widespread *lack* of state-level innovations can serve as the catalyst for new federal mandates or federal grants. In yet other cases, the origins of a federal program might lie in cross-state or even non-state activities such as the work of interest groups, lobbies, community activists, philanthropic foundations, or research organizations whose explicit goal is to build on (or overcome obstacles to) various policy initiatives at the state level. It will not be possible in this short historical overview to scrutinize the state-level antecedents of every major piece of federal education legislation. It will, however, be possible to give a sense of the general evolution of a rapidly expanding federal role in schools since 1950.<sup>10</sup> It will also be possible, besides following the activities of Congress and the presidency, to examine the involvement of the federal *courts* in public schools. One could well argue that the judicial branch

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<sup>8</sup> See Philip A. Grant, Jr. “Catholic Congressmen, Cardinal Spellman, Eleanor Roosevelt and the 1949-1950 Federal Aid to Education Controversy,” *American Catholic Historical Society of Philadelphia* 90 (December 1979), 1-4.

<sup>9</sup> Christopher Cross, *Political Education: National Policy Comes of Age* (New York: Teachers College Press, 2004), 153.

<sup>10</sup> See Carl F. Kaestle, “Federal Aid to Education Since World War II: Purposes and Politics” in Center on Education Policy, *The Future of the Federal Role in Elementary and Secondary Education* (February 2001), 26.

has done even more than the executive or the legislative branches of the federal government to shape America's schools in the past fifty years. The courts, therefore, will not be marginalized in this analysis.

## ***The Eisenhower Years***

After Eisenhower's election in 1952, the federal role in education acquired greater visibility than it had had in the past with the creation of a new cabinet-level department, the Department of Health, Education, and Welfare (HEW). Launched after congressional approval in 1953, the new department oversaw the work of the existing federal Office of Education, which eventually became the "command center" of federal education policy-making. In the early 1950s, the most pressing issues facing education officials derived from the massive and widespread demographic changes of the baby boom. Between 1945 and 1955, the baby boom had added more than four million children a year to the nation's elementary schools. Inasmuch as birth rates had fallen during the Great Depression and scarce resources had gone to meet other demands during World War II, very little school construction had taken place in these years. Consequently, when the baby boom hit in the early 1950s, local districts faced a desperate need for more classrooms—as well as more teachers—to accommodate rising enrollments. In this context, many local school districts began to request federal aid.<sup>11</sup>

At first, the Eisenhower administration hesitated to devote federal resources to what it considered a state and local matter. Three key issues prevented Eisenhower from increasing federal aid to education in the early 1950s. The first was a fear that federal aid might lead to federal control of schools. As

### **Political Snapshot**

**President: Dwight D. Eisenhower (R) 1953 – 1956 First Term**

Secretary of Interior: Douglas McKay

Secretary of H.E.W.: Oveta Culp Hobby

Marion B. Folsom (July 20, 1955)

Commissioner of Education: Lee M. Thurston

Samuel M. Brownell

**Major education actions:**

1953 – creation of Department of Health, Education and Welfare

**83<sup>rd</sup> Congress (1953-1955)**

**SENATE: 48-Rep, 47-Dem, 1-Other**

Vice President: Richard M. Nixon (R)

Majority Leader: Robert A. Taft (R-OH), died July, 1953.

William F. Knowland (R-CA), Aug. 1953.

Minority Leader: Lyndon B. Johnson (D-TX)

Committee: Labor and Public Welfare

Chair: H. Alexander Smith (R-NJ)

**HOUSE: 221-Rep, 213-Dem, 1-Other**

Speaker: Joseph W. Martin, Jr. (R-MA)

Majority Leader: Charles A. Halleck (R-IN)

Minority Leader: Sam Rayburn (D-TX)

Committee: Committee on Education and Labor

Chair: Samuel K. McConnell, Jr. (R-PA)

**84<sup>th</sup> Congress (1955-1957)**

**SENATE: 48-Dem, 47-Rep, 1-Other**

Vice President: Richard M. Nixon (R)

Majority Leader: Lyndon B. Johnson (D-TX)

Minority Leader: William F. Knowland (R-CA)

Committee: Labor and Public Welfare

Chair: Lister Hill (D-AL)

**HOUSE: 232-Dem, 203-Rep.**

Speaker: Sam Rayburn (D-TX)

Majority Leader: John W. McCormack (D-MA)

Minority Leader: Joseph W. Martin, Jr. (R-MA)

Committee: Committee on Education and Labor

Chair: Graham A. Barden (D-NC)

<sup>11</sup> See Frank J. Munger and Richard F. Fenno, *National Politics and Federal Aid to Education* (Syracuse: Syracuse University Press, 1962), which provides a particularly valuable summary of the federal role in the decade and a half after World War II. Focusing on the period from 1949 to 1961, Munger and Fenno pay special attention to the work of the House Committee on Education and Labor and the Senate Committee on Labor and Public Welfare. They also examine the work of non-governmental organizations involved in the debate, including the National Education Association, the American Legion, the National Catholic Welfare Conference, the American Manufacturer's Association, the National Congress of Parents and Teachers Association, the National Farmers Union, and the Daughters of the American Revolution. Their analysis provides a useful introduction to the failure of "general aid" bills for education in the 1950s.



Eisenhower remarked, “when an undertaking is predominantly local in character, the federal involvement should be restrained to avoid federalization.”<sup>12</sup> The second issue was the fear that federal aid might flow to religious or parochial schools. The third—and ultimately most significant—issue to block federal aid to schools in the 1950s was the issue of racial desegregation. After the unanimous ruling of the Supreme Court in the case of *Brown v. Board of Education of Topeka, Kansas*, in 1954, federal aid could not support the construction of racially segregated schools. The court’s decision had made the principle of “equal educational opportunities” a corollary to the equal protection clause of the Fourteenth Amendment and had found that racially segregated schools, when maintained by force of law or by any official state action, were “inherently unequal.” Federal aid, therefore, would have to facilitate desegregation.

In 1955, the court released a remedy-phase decision, known as *Brown II*, which required states and local school districts to strike all segregationist laws from their books and to pursue racial desegregation . . . “with all deliberate speed.” A few months after this ruling, President Eisenhower hosted a major White House Conference on Education. The participants in the conference agreed that the pursuit of racial desegregation was likely to cause significant turmoil and should therefore proceed slowly in local communities. As one conference brief put it, “the great social, psychological, and organizational changes implicit in the recent decisions of the Supreme Court designed to abolish segregation in the public schools cannot be achieved with equal speed in every community. . . . This is a problem which must be worked out by each community in its own way.”<sup>13</sup> By the time the White House Conference on Education had ended, Eisenhower had tacitly endorsed the “gradualism” (or “accommodationism”) of the Supreme Court in its *Brown II* decision.

### Political Snapshot

**President: Dwight D. Eisenhower (R) 1957 – 1960 Second Term**

Secretary of H.E.W.: Marion B. Folsom

Arthur S. Flemming (1958)

Commissioner of Education: Lawrence G. Derthick

**Major education actions:**

1958 – National Defense Education Act (NDEA) [Note 1]

**85th Congress (1957-1958)**

SENATE: 49-Dem, 47-Rep.

Vice-President: Richard M. Nixon (R)

Majority Leader: Lyndon B. Johnson (D-TX)

Minority Leader: William F. Knowland (R-CA)

Committee: Labor and Public Welfare

Chair: Lister Hill (D-AL)

Ranking Minority Member: H. Alexander Smith (R-NJ)

**HOUSE: 234-Dem, 201-Rep.**

Speaker: Sam Rayburn (D-TX)

Majority Leader: John W. McCormack (D-MA)

Minority Leader: Joseph W. Martin, Jr. (R-MA)

Committee: Committee on Education and Labor

Chair: Graham A. Barden (D-NC)

Ranking Minority Member: Samuel K. McConnell, Jr. (R-PA)

**86th Congress (1959-1960)**

**SENATE: 65-Dem, 35-Rep.**

Vice-President: Richard M. Nixon (R)

Majority Leader: Lyndon B. Johnson (D-TX)

Minority Leader: Everett M. Dirksen (R-IL)

Committee: Labor and Public Welfare

Chair: Lister Hill (D-AL)

Ranking Minority Member: Barry M. Goldwater (R-AZ)

**HOUSE: 283-Dem, 153-Rep, 1-Other**

Speaker: Sam Rayburn (D-TX)

Majority Leader: John W. McCormack (D-MA)

Minority Leader: Charles A. Halleck (R-IN)

Committee: Committee on Education and Labor

Chair: Graham A. Barden (D-NC)

Ranking Minority Member: Carroll D. Kearns (R-PA)

<sup>12</sup> James Duran, “The Beginnings of Ambivalence: Dwight D. Eisenhower and the Federal Aid to Education Issue, 1949-1953,” *Kansas History* 13:3 (1990): 166-177. See also Don T. Martin, “Eisenhower and the Politics of Federal Aid to Education: The Watershed Years, 1953-1961,” *Midwest History of Education Journal* 25:1 (1998), 7-12; and James C. Duram, “‘A Good Growl’: The Eisenhower Cabinet’s January 16, 1959, Discussion of Federal Aid to Education,” *Presidential Studies Quarterly* 1978 8(4): 434-444.

<sup>13</sup> In 1954, President Eisenhower’s State of the Union address asked local schools to report their needs—for school construction, teacher salaries, and so on—to the federal government, to be considered at the White House conference on education the following year.

This capitulation to gradualism did not sit well with members of Congress from the North who wanted to push harder for southern desegregation. Noting that Eisenhower had asked Congress for nearly \$1.6 billion in federal aid for school construction in 1955, northern members of Congress pressed to use this money to upgrade the quality of southern schools—and, at the same time, to require desegregation. Each of Eisenhower’s federal aid-to-education proposals was amended by representative Adam Clayton Powell (D-NY), who attached a “desegregation rider” to every school-construction bill. Each year from 1955 to 1958, Eisenhower submitted bills for school construction, and, each time, congressman Powell attached his rider—and, each time, in a Congress controlled by southern Democrats who were vehemently opposed to desegregation, the president’s bills failed. Powell knew his amendment would kill school-aid bills, but he refused to allow federal grants to flow to unconstitutionally segregated schools.

The Powell Amendment was not, however, the only obstacle to federal aid for school construction. Another obstacle was the problem of how to distribute federal grants to the several states. Three plans surfaced: flat grants, equalization grants, and matching grants, but each had political liabilities. Congressmen from states with large populations wanted flat grants (based on each state’s population) while members of Congress from states with low tax revenues wanted redistributive equalization grants (based on national average per pupil expenditures). Matching grants seemed to offer a fair compromise, but formulas for matching grants were often too complicated to win broad political support. Consequently, even as new federal aid bills were introduced in Congress year after year, they died in committee because members could not agree on allocation plans. The allocation debates illustrated a persistent tension between federal and state control of school resources—a tension that would shape countless aid programs in the years to come.<sup>14</sup>

In 1957, Eisenhower’s attempt to separate the issue of school construction from the issue of school desegregation was overshadowed by a major desegregation crisis in Little Rock, Arkansas. A dramatic stand-off between President Eisenhower and Governor Orval Faubus ended only when Eisenhower used the National Guard to escort nine black students into Little Rock’s formerly all-white Central High School. This event attracted nationwide attention and cast the federal government as the ultimate protector of racial equality and civil rights. To many southerners, however, it cast the federal government as a usurper of state and local prerogatives in the realm of education.<sup>15</sup> Both interpretations were, of course, plausible. Nonetheless, despite

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<sup>14</sup> In 1956, the House of Representatives rejected a bill (introduced in 1955) for \$1.6 billion in federal aid for school construction. The bill was supported by President Eisenhower and, at first, by a majority in both houses of Congress. The bill failed, however, owing to a dispute over the allocation formula. According to the bill as it came out of the House Committee on Education and Labor, funds were to be distributed on a per-pupil basis, thus giving an advantage to overcrowded southern schools and a disadvantage to better-funded and more sparsely populated northern schools. Two other systems had been proposed—one that would have distributed funds on a proportional basis according to each state’s wealth (as determined by income tax payments) with richer (northern) states getting more, another that would have distributed funds on a proportional basis with poorer (southern) states getting more—but neither passed. A decade later, in the Elementary and Secondary Education Act of 1965, the second of these two alternatives won the day.

<sup>15</sup> In March, 1956, a group of nineteen southern Senators and sixty-three southern representatives had declared that the *Brown* decision constituted “an unwarranted exercise of power by the Court, contrary to the Constitution.” The legislators, calling their statement of intent a Southern Manifesto, vowed “to use all lawful means to bring about the reversal of this decision which is contrary to the U.S. Constitution and to prevent the use of force in its implementation.” Such statements were typical of southern leaders in the years after the *Brown* decisions. Governor

the early reluctance of the Eisenhower administration to act in support of racial desegregation, the Little Rock crisis placed the federal government—not the states—in the vanguard of guaranteeing equal educational opportunity to all students.

The Little Rock crisis had another outcome as well. While it assured Governor Faubus's reputation in history as an uncompromising racist, it also spurred him to action in other areas of education policy. As historian Elizabeth Shores has noted, Faubus was much more progressive in related areas of educational reform. For example, in the mid-1950s, he pushed hard to expand opportunities for mentally, physically, and emotionally handicapped children in Arkansas, and his deputy, David Ray, later went to Washington, D.C., where he played an important role in shaping federal policy around this issue.<sup>16</sup> As Shores explains, Faubus supported government aid to the handicapped in part to show the world that his state was not totally backward in the realm of education. In Shore's words, "It is clear that Orval Faubus supported the Arkansas Children's Colony [for handicapped students] . . . and helped build political support in Arkansas for developmental disabilities services, in part to counter the world-wide negative image he earned in the Central High crisis. . . ."<sup>17</sup> In other words, Faubus did for disabled students what he refused to do for black students: he worked at the state level to equalize educational opportunity.

As it happened, special education for the disabled gained significant ground as part of the federal agenda in the 1950s. In 1955, President Eisenhower declared National Retarded Children's Week and urged support for the National Association for Retarded Children (NARC, founded in 1952). A number of states lobbied for more aid to support research on education for the mentally disabled, and several new federal laws made funds available for special education programs on a matching basis. In 1956, Congress passed P.L. 84-825, P.L. 84-880, and P.L. 84-922 to support not only teacher-training programs but also diagnostic equipment (for hearing and vision tests) and up-to-date vocational rehabilitation facilities. The next year, 1957, Congress authorized P.L. 85-308 for more books for the blind as well as P.L. 85-926 for advanced special-education teacher training programs in colleges and universities. Each of these laws aimed to build state and local capacity to educate the disabled—the expectation being that, after receiving short-term "start-up" grants to strengthen local institutions, states would assume full responsibility for future costs and administration expenses.

By 1957, the federal role in education had already expanded considerably, but major changes were in store. In October, 1957, the focus of federal policy changed when the Soviet Union launched the world's first orbiting satellite, *Sputnik*. Immediately, the rhetoric surrounding education shifted from the needs of below-average students to the needs of above-average students. When the Soviet Union launched a second satellite just a month after the first, the success of academically talented students became the foremost preoccupation of the nation's schools. A week after the launching of *Sputnik II*, a federal policy paper titled "Education in Russia" stressed the Soviets' aggressive cultivation of academic excellence and called on

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Faubus's actions in Little Rock were simply a more visible example of southern resistance to federal power over the issue of desegregation.

<sup>16</sup> See Elizabeth F. Shores, "The Arkansas Children's Colony at Conway: A Springboard for Federal Policy on Special Education," *Arkansas Historical Quarterly* LVII:4 (Winter 1998), 408-434.

<sup>17</sup> Elizabeth F. Shores, "The Federal Children's Bureau as an Incubator for Special Education Politics in Arkansas" (Unpublished paper delivered at the Annual Meeting of the American Educational Research Association, Seattle, Washington, April 14, 2001).

American educators to do the same—but better—in hopes of out-performing the Soviet Union and winning “the race for space.” The cold war was no less potent than previous wars had been in stimulating rapid increases in federal aid to education.

The combined themes of national defense and international economic competition proved remarkably durable over time as reasons to expand the federal role in education. In 1958, Congress hurriedly approved the “emergency” National Defense Education Act (NDEA), which sent an unprecedented infusion of federal funds into the public schools. According to President Eisenhower, the United States needed to outdo its foe, the Soviet Union, “on the Communists’ own terms—outmatching them in military power, general technological advance, and specialized education and research.”<sup>18</sup> The NDEA, therefore, targeted these areas, shoring up the nation’s educational and research facilities, fostering technical development, and trying to improve students’ academic achievement levels. In particular, federal resources under the NDEA funded programs in science, mathematics, engineering, and foreign languages. (It is worth noting that legislation for such a program had been in process even before *Sputnik*; the satellite simply bolstered political support for existing science- and language-related initiatives and prompted Congress to act.)

While few of the nation’s schools had been seeking aid in these areas—instead, most sought federal aid for school construction and teachers’ salaries—they nonetheless jumped at the chance to purchase materials with external funds. They bought millions of new microscopes, telescopes, and other devices for science labs and filled closet upon closet with radios, televisions, and other audio-visual equipment. The schools justified each purchase as a contribution to national defense or, more accurately, to the education of those who would be responsible for the country’s military strength and resistance to domestic subversion. The NDEA was not, however, the only federal program to support science education after *Sputnik*. The Physical Science Study Committee gathered science teachers and curriculum experts from around the country to devise new courses for high school science classes. Federal grants from the National Science Foundation funded both the development and the distribution of curricular materials but did not monitor the use of these materials at the local level. Indeed, officials from the U.S. Office of Education were prohibited from exercising any control over local curricula, and officials in other federal agencies made every effort to avoid the appearance of unwanted “federal control” over local classrooms.<sup>19</sup>

Both the NDEA and the Physical Science Study Committee provided federal aid to local schools on a strictly voluntary basis. It was important to show local officials that the federal government could help schools without “telling locals what to do.” Also, both programs avoided fears of federal aid to parochial schools by deliberately excluding them from receiving direct grants (though private and parochial schools *were* allowed to accept equipment or books “on loan” from public schools). Similarly, the issue of federal aid to racially segregated schools—the issue that

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<sup>18</sup> Barbara Barksdale Clowse, *Brainpower for the Cold War: The Sputnik Crisis and National Defense Education Act of 1958* (Westport, Conn.: Greenwood Press, 1981), 16. See also Sidney Sufrin, *Administering the National Defense Education Act* (Syracuse, N.Y.: Syracuse University Press, 1963); James R. Killian, Jr., *Sputnik, Scientists, and Eisenhower: A Memoir of the First Special Assistant to the President for Science and Technology* (Cambridge, Mass.: MIT Press, 1977).

<sup>19</sup> See John L. Rudolph, *Scientists in the Classroom: The Cold War Reconstruction of American Science Education* (New York: Palgrave, 2002).

had foiled Eisenhower's bills for school construction aid—was sidelined in debates over the NDEA. Senators Barry Goldwater (R-AZ) and Strom Thurmond (D-SC) expressed concern that the NDEA would give the federal government a lever with which to “force” southern schools to desegregate, but they exaggerated this possibility. Assistant Secretary of Health, Education, and Welfare Elliot Richardson assured members of Congress that, while the NDEA would indeed seek to distribute federal aid equitably among the races, it would not require schools receiving aid to be integrated. Thus, when aid became available in 1959, NDEA grants flowed to segregated schools.

## The Kennedy Years

In 1960, Eisenhower's second term ended, and, after an extremely close election, the presidency passed to Senator John F. Kennedy of Massachusetts. Kennedy had long supported the growth of federal aid to schools. When he ran for office for the first time in 1946, he threw his support behind the new federally subsidized school lunch program, and, over the course of his fourteen years in Congress, he had proposed bills to provide grants for school construction, instructional materials, and an array of auxiliary services, such as medical supplies for school infirmaries and items for the disabled. When he ran for president in 1960, he was far more vocal than his opponent, Vice President Richard Nixon, in advocating for “general aid” to schools. Although Kennedy's margin of victory was among the slimmest of the century, he did not forget the many campaign promises he had made to schools. Indeed, shortly after his inauguration in 1961, he proposed a large-scale package of general aid for school construction as well as teacher salaries.

This proposal sailed through the Senate but stalled in the House, where southern Democrats on the Rules Committee once again suspected that federal aid might be used to force racial desegregation. Another issue hampering federal aid to schools during the Kennedy years was, of course, the issue of federal aid to parochial schools. As historian Jack Dougherty has observed, representative Clement Zablocki (D-WI) had criticized previous administrations for failing to include private and parochial schools in its funding proposals. Zablocki blamed this failure on confusion over the establishment clause of the First Amendment, inquiring during testimony before the education subcommittee of the House Committee on Education and Labor, “Why is

### Political Snapshot

**President:** **John F. Kennedy (D) 1961 – 1963**  
**Lyndon B. Johnson (D) 1963 – 1964**

Secretary of H.E.W.: Abraham A. Ribicoff  
Anthony J. Celebrezze (1962)

Commissioner of Education:  
Sterling M. McMurrin (1961-1962)  
Francis Keppel (1963-1965)

**Major education actions:**  
1962 – Educational Television Act  
1963 – Higher Education Facilities Act [Note 3]  
1964 – Title VI of the Civil Rights Act [Note 1]

#### 87th Congress (1961-1962)

**SENATE: 64-Dem, 36-Rep.**  
Vice-President: Lyndon B. Johnson (D)  
Majority Leader: Mike Mansfield (D-MT)  
Minority Leader: Everett M. Dirksen (R-IL)  
Committee: Labor and Public Welfare  
Chair: Lister Hill (D-AL)  
Ranking Minority Member: Barry M. Goldwater (R-AZ)

#### HOUSE: 263-Dem, 174-Rep.

Speaker: Sam Rayburn (D-TX), died 1961  
John W. McCormack (D-MA), 1962  
Majority Leader: John W. McCormack (D-MA), 1961  
Carl B. Albert (D-OK), 1962  
Minority Leader: Charles A. Halleck (R-IN)  
Committee: Committee on Education and Labor  
Chair: Adam C. Powell (D-NY)  
Ranking Minority Member: Carroll D. Kearns (R-PA)

#### 88th Congress (1963-1966)

**SENATE: 66-Dem, 34-Rep.**  
Vice-President: Lyndon B. Johnson (D) until 11/22/63  
Majority Leader: Mike Mansfield (D-MT)  
Minority Leader: Everett M. Dirksen (R-IL)  
Committee: Labor and Public Welfare  
Chair: Lister Hill (D-AL)  
Ranking Minority Member: Barry M. Goldwater (R-AZ)

#### HOUSE: 259-Dem, 176-Rep.

Speaker: John W. McCormack (D-MA)  
Majority Leader: Carl B. Albert (D-OK)  
Minority Leader: Charles A. Halleck (R-IN)  
Committee: Committee on Education and Labor  
Chair: Adam C. Powell (D-NY)  
Ranking Minority Member: Peter Frelinghuysen (R-NJ)

federal assistance to private college and university students constitutional . . . but federal assistance to private grade school and high school students unconstitutional?”<sup>20</sup> To parents of children attending parochial elementary and secondary schools, it seemed a perfectly reasonable question—but one that faced enduring political hurdles.

Zablocki won support for his position from Fr. Virgil Blum, a Jesuit priest and a professor of political science at Marquette University in Milwaukee, who was a national leader of the organization Citizens for Educational Freedom, which advocated federal aid to parochial schools. Blum supported a plan under which the federal government could avoid the church-state fracas by making direct grants to parents, who could then use these “vouchers” to send their children either to public or, if they chose, to private, parochial, or independent schools. This proposal did not win acceptance in the early 1960s (though a narrowed form of vouchers for economically disadvantaged students did win approval in the federal courts several decades later). Significantly for that era, however, Blum’s proposal endorsed the idea of directing federal aid to “the child” rather than “the school,” and this idea laid a foundation for aid to economically disadvantaged children during the next administration.<sup>21</sup> (Some have noted that certain policy ideas must “incubate” and evolve before they are ready to hatch in politically acceptable form at some later date.)<sup>22</sup>

Kennedy did not succeed in passing a “general aid” package for schools in 1961 or 1962, but he did sign several smaller programs into law. In particular, he succeeded in passing programs for disabled students (a group of particular interest to him, because his sister, Rosemary, suffered from mental retardation). In 1961, he gathered a distinguished panel of experts to develop “A National Plan to Combat Mental Retardation.” The panel announced its findings two years later, in 1963, and Congress responded with two major laws: the Maternal and Child Health and Mental Retardation Planning Act, which granted \$265 million in federal aid over five years to support programs for the mentally retarded, and the Mental Retardation Facilities and Community Mental Health Construction Act, which granted \$330 million over five years for new buildings to serve disabled citizens. Virtually every state launched a federally funded Mental Retardation Planning Project, the chief aim of which was to bolster states’ eligibility for future federal grants.

In addition to educational problems associated with mental retardation, Kennedy also took an interest in educational problems associated with urban poverty—particularly the problem of inadequate preparation for school among economically and “culturally” deprived young people. In the early 1960s, in response to a growing body of sociological research into “cultural deprivation” in the inner city, a number of urban school districts had begun to launch “compensatory education” programs designed to meet the needs of poor minority students. Many of these early compensatory education programs benefited from private aid from the Ford Foundation and later became eligible for federal support. For example, the Kennedy administration’s Manpower Development and Training Act supported vocational education

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<sup>20</sup> Jack Dougherty, “Metropolitan Milwaukee and Federal Education Policy, 1945-Present” (Unpublished workshop paper, January 1999), 8-9.

<sup>21</sup> Dougherty, 8-9.

<sup>22</sup> See, for example, Nelson Polsby, *Political Innovation in America: The Politics of Policy Initiation* (New Haven, Conn.: Yale University Press, 1984).

programs for at-risk high school students, and its Juvenile Delinquency and Youth Offenses Control Act funded innovative programs to cut dropout rates, improve supplemental reading techniques, and offer “life-adjustment” guidance and counseling services to low-income students in urban public schools.

In 1961, the availability of federal aid for inner cities led the nation’s fourteen largest school districts to create a lobby known as the Great Cities Program for School Improvement (later called the Council of Great City Schools, or CGCS). The Council of Great City Schools had one main objective: to steer federal aid directly to city municipal governments and away from state agencies that tended to allow federal resources to flow disproportionately to suburban areas. As Boston superintendent Frederick Gillis noted in his annual report in 1961-1962, the phrase *great cities* in the new organization’s name did not refer to “metropolitan areas where middle-class and upper-class suburbanites live in commuter dormitories surrounding the core city”; rather, he asserted, the phrase *great cities* referred to “the inner city itself.” The creation of the Council of Great City Schools marked a shift in state-federal relations in the realm of education.<sup>23</sup> Large urban districts increasingly appealed directly to the federal government for help (and often viewed state education agencies as adversaries or competitors in the pursuit of federal resources).

The issue of “compensatory education” for “culturally disadvantaged” students in inner-city schools shifted the emphasis of federal education policy back to the needs of low-achieving students and away from the *Sputnik*-inspired academic emphasis on high achieving students. Indeed, the early 1960s also saw a growing emphasis on local schools as “multi-purpose agencies” providing both resources and a cultural “climate” conducive to meeting the needs of poor minority students. This mounting emphasis on poor minority students reflected not only the Kennedy administration’s pursuit of “urban renewal” but also the growing influence of the civil rights movement, which was sweeping the country under the charismatic leadership of the Reverend Martin Luther King, Jr., his Southern Christian Leadership Council (SCLC), and, after 1960, the growing Student Nonviolent Coordinating Committee (SNCC).

*Students* as a constituency were, of course, valued participants in the civil rights movement. In 1960, students in North Carolina used the sit-in tactic to protest segregated lunch counters. In 1961, the Freedom Rides had drawn attention to the problem of racism throughout the South. In 1962, federal marshals had guarded young James Meredith as he enrolled at the University of Mississippi. And, in May, 1963, the televised brutality of the police in Birmingham, Alabama, where young people were blasted with water from fire hoses and attacked by dogs, revealed the urgency of the civil rights movement to millions of northern middle-class whites. By the time of the legendary March on Washington for Civil Rights and Jobs in the summer of 1963, it was impossible for Americans to ignore the growing strength of the movement. Indeed, after President Kennedy’s assassination in Dallas in November and the shift to Lyndon Johnson’s administration thereafter, the civil rights movement was arguably the most powerful force in American domestic politics—and its influence was felt strongly in the realm of education.<sup>24</sup>

<sup>23</sup> Frederick J. Gillis, *Annual Report of the Superintendent* (Boston, 1962), 62, 16-18.

<sup>24</sup> The literature on the civil rights movement is vast. A good place to start is Taylor Branch, *Parting the Waters: America in the King Years, 1954-1963* (New York: Simon and Schuster, 1988) and *Pillar of Fire: America in the King Years, 1963-1965* (New York: Simon and Schuster, 1998).

## The Johnson Years

Whereas Kennedy had focused on mental retardation and urban renewal, Johnson placed his emphasis on civil rights and poverty. His first two legislative successes were the passage of the Vocational Education Act and the passage of the Higher Education Facilities Act of 1963, both of which passed within the first month of his presidency. A few months later, he shepherded the landmark Civil Rights Act of 1964, which barred discrimination on the basis of race, color, or national origin in all programs receiving federal aid, and (in short order) the Economic Opportunity Act of 1964, which extended anti-discrimination provisions into the workplace, into law. By the fall of 1964, President Johnson had laid a foundation for his War on Poverty, the centerpiece of his so-called Great Society agenda, and the next major item on this agenda was a massive increase in federal aid to education. Johnson was, of course, familiar with his predecessors' repeated failures to pass a "general" aid-to-education bill, and he did not want to make the same mistakes. At the same time, however, he knew that existing federal aid under the NDEA, the impact-aid program, and various programs for the disabled were not sufficient to meet the growing needs of students in the nation's poorest areas. It was time, he believed, for a massive increase in federal aid to disadvantaged students.

In 1964, the U.S. Office of Education issued a major report titled *Compensatory Education for Cultural Deprivation*. The next year, a national conference of urban school administrators inspired delegates from the Milwaukee public schools to pass a resolution "supporting a federal program for school financial assistance that recognizes the complex needs of the larger city school systems."<sup>25</sup>

In 1964, only three states—Massachusetts, California, and New York—offered state aid to local compensatory education programs, and this aid was limited in scope (in Massachusetts, the total

### Political Snapshot

#### President: Lyndon B. Johnson (D) 1965 - 1968

Secretary of H.E.W.: John W. Gardner  
 Wilbur J. Cohen (1968)  
 Commissioner of Education: Francis Keppel  
 Harold Howe II (1966)

#### Major education actions:

1965 – Elementary & Secondary Education Act (ESEA) [Note 1]  
 1965 – Higher Education Act [Note 3]  
 1965 – National Vocational Student Loan Insurance Act [Note 3]  
 1965 – Older Americans Act [Note 6]  
 1966 – Elementary & Secondary Education Amendments  
 1966 – Child Nutrition Act [Note 6]  
 1966 – Higher Education Amendments of 1966  
 1966 – Veterans Readjustment Benefits Act  
 1966 – Demonstration Cities and Metropolitan Development Act  
 1967 – Elementary & Secondary Education Amendments  
 1967 – Age Discrimination in Employment Act [Note 5]  
 1968 – Architectural Barriers Act [Note 4]  
 1968 – Higher Education Amendments of 1968 [Note 3]  
 1968 – Bilingual Education Act (reauthorization of ESEA)

#### 89th Congress (1965-1966)

**SENATE: 68-Dem, 32-Rep.**  
 Vice-President: Hubert H. Humphrey (D)  
 Majority Leader: Mike Mansfield (D-MT)  
 Minority Leader: Everett M. Dirksen (R-IL)  
 Committee: Labor and Public Welfare  
 Chair: Lister Hill (D-AL)  
 Ranking Minority Member: Jacob K. Javits (R-NY)

#### HOUSE: 295-Dem, 140-Rep.

Speaker: John W. McCormack (D-MA)  
 Majority Leader: Carl B. Albert (D-OK)  
 Minority Leader: Gerald R. Ford (R-MI)  
 Committee: Committee on Education and Labor  
 Chair: Adam C. Powell (D-NY)  
 Ranking Minority Member: William H. Ayres (R-OH)

#### 90th Congress (1967-1968)

**SENATE: 64-Dem, 36-Rep.**  
 Vice-President: Hubert H. Humphrey (D)  
 Majority Leader: Mike Mansfield (D-MT)  
 Minority Leader: Everett M. Dirksen (R-IL)  
 Committee: Labor and Public Welfare  
 Chair: Lister Hill (D-AL)  
 Ranking Minority Member: Jacob K. Javits (R-NY)

#### HOUSE: 247-Dem, 187-Rep.

Speaker: John W. McCormack (D-MA)  
 Majority Leader: Carl B. Albert (D-OK)  
 Minority Leader: Gerald R. Ford (R-MI)  
 Committee: Committee on Education and Labor  
 Chair: Carl D. Perkins (D-KY)  
 Ranking Minority Member: William H. Ayres (R-OH)

<sup>25</sup> Dougherty, 11. See also John A. Dougherty, *More Than One Struggle: African-American School Reform Movements in Milwaukee, 1930-1980* (Chapel Hill: University of North Carolina Press, 2004). See also James Sundquist, *Politics and Policy: The Eisenhower, Kennedy, and Johnson Years* (Washington, D.C.: The Brookings Institution, 1968).



program for the entire state operated on a budget of \$650,000). Johnson therefore appointed a presidential task force led by commissioner of education Francis “Frank” Keppel to meet secretly to develop a plan of federal grants “to improve educational opportunity and achievement of students attending schools in areas—*both urban slum and rural depressed*—marked by high rates of unemployment and low per capita income and educational achievement.”<sup>26</sup>

Among the officials assisting Keppel in this endeavor were Wilbur Cohen, the assistant secretary of health, education, and welfare for legislative affairs, and Senator Wayne L. Morse (D-OR), chair of the Senate subcommittee on education. Morse was the first to suggest attaching the bill to the largest and most popular education program—impact aid. The virtue of the impact-aid laws was not only that they granted federal funds to schools on a loosely regulated basis, but also that they granted funds to schools on the basis of *total* student enrollments rather than just public school enrollments. In this way, they avoided the dilemma aid to parochial schools. As historian Julie Roy Jeffrey noted in her book, *Education for Children of the Poor*, “An emphasis on giving money to the needy child rather than the school offered a good chance of avoiding the whole religious question. . . . Moreover, the poverty theme was politically popular. . . .”<sup>27</sup> (The fact that Senator Morse’s home state of Oregon, like other western states with army installations, received substantial amounts of money under the impact aid law no doubt influenced his support for the impact aid approach to federal grants.)

In October, 1964, Johnson asked Keppel to start building support for this proposal among key lobby groups such as the National Catholic Welfare Conference (NCWC) and the National Education Association (NEA). Keppel was pleased to find that both of these groups were amenable to Senator Morse’s idea of using the impact-aid approach to offer voluntary grants based on the total number of low-income students in each state. By the time of the presidential election in November, 1964, Keppel and his staff had devised a formula that distributed federal aid to local schools based on each state’s total number of school-aged children with annual family incomes under \$2,000. On April 11, 1965, in a ceremony in front of his own former one-room schoolhouse in Stonewall, Texas, Johnson signed the Elementary and Secondary Education Act (ESEA), into law. Technically, the ESEA amended the “impact aid” law (P.L. 81-874) of 1950. Its first title, Title I, focused on the needs of the poorest students.

Title I aimed to improve not only educational opportunities, but also educational *outcomes*, for disadvantaged children.<sup>28</sup> The emphasis on aid to “children, not schools” meant that federal

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<sup>26</sup> Julie Roy Jeffrey, *Education for Children of the Poor: A Study of the Origins and Implementation of the Elementary and Secondary Education Act of 1965* (Columbus, Ohio: Ohio State University Press, 1978), 38. Keppel’s initial bill was called the National Education Improvement Act. See also Christine Elizabeth Dietrich, “Francis Keppel and Lyndon Johnson, Unique Collaborators in the Struggle for Federal Aid: ESEA, 1965” (Unpublished Ph.D. dissertation, Lehigh University, 1994); and Edward Miech, “The Necessary Gentleman: Francis Keppel’s Leadership in Getting Education’s Act Together” (Unpublished M.A. thesis, Harvard University, 2000).

<sup>27</sup> Jeffrey, 71.

<sup>28</sup> In 1966, Congress altered the Title I formula to allow poor states to use the *national* average per pupil expenditure, thus emphasizing the idea of national equality in educational spending and ensuring that no state would fall below the national median. (The expectation was that, gradually, as the national median amount moved up, all schools in all states would come to enjoy the same “average per pupil expenditure.”) For more information on the political context of the ESEA, see Edith Green, *Education and the Public Good: The Federal Role in Education* (Cambridge, Mass.: Harvard University Press, 1964) and Eugene Eidenberg and Roy Morey, *An Act of Congress: The Legislative Process and the Making of Education Policy* (New York: Norton, 1969).

funds could be (and were) spent on instruction, not just construction, in local districts. Besides textbooks and teachers—two items little supported by prior federal aid programs—the ESEA also provided aid for technology in local classrooms. The idea of “technological poverty” gained ground in the mid-1960s as a criterion of educational disadvantage, the assumption being that a lack of access to new technology led to a lack of access to economic opportunity. Title II of the ESEA therefore provided federal grants to improve library resources and multi-media equipment, Title III provided federal grants to improve language acquisition, Title IV provided federal grants to support research on effective teaching strategies, and Title V funded the expansion of state departments of education. Each title funneled previously unimaginable sums of aid into schools, and each was expected to produce results in terms of academic performance. The main stipulation underlying the ESEA was that schools receiving federal grants had to help children overcome the effects that poverty had on learning.

In order to secure as much ESEA money as possible, school districts throughout the country implemented major organizational changes. Many states and even some local districts launched centralized bureaus specifically for the purpose of maximizing federal grant receipts. For example, the Boston public schools created a new Office of Program Development, and the Milwaukee public schools created a bluntly named Department of Federal Projects, both of which supervised applications for federal funds. As one reporter noted with respect to Milwaukee’s department, “The beauty of federal aid . . . is that you can be paid for asking for it. School officials say that the cost of the proposed Department of Federal Projects to get federal aid will [itself] be financed by, you guessed it, federal aid.”<sup>29</sup> Indeed, even relatively wealthy school districts took advantage of the availability of ESEA grants. In Wisconsin, the affluent Milwaukee suburb of Whitefish Bay accepted \$25,000 in ESEA funds in 1967—funds the suburb used to start a new special education program for children with learning disabilities.

To critics who charged that Whitefish Bay was “stealing” money that was, in fact, intended for the poor, the city’s representative in Congress responded, “If they [his fellow members of Congress] write stupid laws, well, that’s their problem.”<sup>30</sup> It was this sort of blatant manipulation of aid and disregard for the law’s underlying purposes, however, that led to worries that the ESEA might become a financial delivery system with no real effect on school programs or student achievement in low-income areas. During hearings on the law before its passage, Senator Robert Kennedy (D-NY) had insisted that the ESEA include regular evaluations to ensure that federal aid was, in fact, producing measurable gains in student achievement, but this provision went frequently ignored.<sup>31</sup> As Julie Roy Jeffrey has observed, federal officials were “hesitant to

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<sup>29</sup> Dougherty, 12.

<sup>30</sup> Dougherty, 17.

<sup>31</sup> See Jeffrey, 120. “Although [the ESEA] required states to evaluate their programs periodically and to report [evaluation results] to the [federal] commissioner of education, no one pushed this requirement. Massachusetts, for example, never fulfilled its obligations under the law.” See also Lorrie Shepard, “The Contest Between Large-Scale Accountability Testing and Assessment in the Service of Learning: 1970-2001” (Paper for the Spencer Foundation Thirtieth Anniversary Conference, 24-25 January 2002). “With Title I came a widespread demand for program evaluation and an implied contract with local districts whereby federal dollars would be spent on education in exchange for evidence of program effectiveness. It was this bargain—which tied funding to measured outcomes—that created the accountability movement. The evaluation provisions in Title I came about because Senator Robert Kennedy doubted whether school administrators understood the problems of or knew how to provide effective

push for evaluations, realizing that these might show the act was not working and, thus, would provide the enemies of federal aid with political ammunition.” As early as 1967, Senator Robert Kennedy told colleagues that “I question whether anything is being accomplished in a major way [with Title I]. . . . I also seriously question whether the people in the ghettos feel anything is really being done.”<sup>32</sup> The ESEA quickly sparked controversy between state and federal officials over which level of government was best equipped to control the law’s implementation.

In order to win congressional approval, the ESEA had been written in such a way that nearly 90 percent of all the school districts in the country were eligible for Title I aid. Yet, federal distribution of aid to suburbs like Whitefish Bay led some to argue that state education agencies might do a more equitable job of distributing aid. In 1967, the ESEA faced its first major challenge—the so-called Quie Amendment to replace “categorical” grants with “block grants” to the states. Proposed by representative Albert H. Quie (R-MN), a member of the House Education and Labor Committee, the Quie Amendment held that state education agencies were better prepared to administer the ESEA than the federal Office of Education, which, Quie argued, was woefully understaffed and unable to monitor the misuse of funds in local school districts (a judgment that Professor Jerome Murphy at Harvard later confirmed in research documenting that “there were some thirty professionals working on all facets of Title I—technical assistance, accounting, program support—[and] only three area desk officers for the entire nation.”)<sup>33</sup>

The Council of Chief State School Officers, which lobbied Congress on behalf of nearly every state department of education in the country, endorsed Quie’s block-grant proposal on the condition that each state would receive as much federal support under a block grant plan in 1969 as it had received under categorical grants in 1968—if not more. The whole premise of Quie’s bill was that it turned administrative and regulatory control over to the states; however, from the states’ perspective, the bill was only desirable if it brought increases in federal aid. The Quie Amendment was eventually defeated after an intense lobbying campaign on the part of civil rights groups and big-city superintendents who maintained that federal administration of the program was necessary to ensure that federal grants flowed to the most disadvantaged students.<sup>34</sup>

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programs for disadvantaged children. He expected that evaluation data could be used by parents as a ‘whip’ or a ‘spur’ to leverage changes in ineffective schools.”

<sup>32</sup> Quoted in Jeffrey, 131, 130.

<sup>33</sup> During the first decade after the passage of ESEA, state education agencies doubled and even tripled in size in order to manage the implementation of the new law. As Milbrey McLaughlin has written, “The mandated responsibilities associated with federal education programs meant that even the weakest SEA [state education agency] also assumed responsibility for planning, evaluation, technical assistance, and oversight. As a result, a new, albeit variable, level of institutional capacity emerged even in the backwaters of state education bureaucracies.” In 1965, in an attempt to facilitate state-federal relations, the Education Commission of the States (ECS) was created with financial support from the Carnegie Corporation and the Ford Foundation.

<sup>34</sup> Quie’s call for minimizing federal bureaucratic “red tape” garnered a great deal of support among both Republicans and Southern Democrats concerned about desegregation. Ultimately, though, Quie’s plan foundered on the very issue that ESEA had successfully overcome: aid to parochial schools. Insofar as ESEA gave money directly to students rather than schools in order to bypass state laws requiring the strict separation of church and state, block grant opponents blamed Quie for trying to raise the church-state issue from the grave. Johnson accused the Republicans of “fanning the church-public school controversy,” and Education Commissioner Harold Howe II called Quie’s proposal a “backward step” in federal aid to education. Representative Gerald Ford responded that Johnson’s charges were “wild and irresponsible” and “outright misrepresentation,” but several interest groups lined up against the block grant bill. Msgr. James D. Donohue noted that “the block grant proposal works to the

(As the NAACP noted, block grants could easily become “a vehicle for getting around racial guidelines” if states were not willing to enforce them.) The idea of block granting Title I recurred periodically over the years but failed to gain majority support—perhaps because block granting federal aid would weaken the federal government’s ability to track the effectiveness of specific local programs for “target” groups of students.<sup>35</sup>

Almost as soon as the ESEA took effect and Title I funds started flowing to local schools in 1965-1966, doubts arose concerning the most effective way to equalize educational opportunities for disadvantaged pupils. Some hoped that compensatory programs would equalize opportunities, but others feared that compensatory education might actually slow the pace of racial desegregation. As early as 1962, leaders within the NAACP had begun to debate whether compensatory education was, perhaps, an *obstacle* to the larger goal of racial integration in the public schools. As Jack Dougherty has noted, the NAACP in Milwaukee had even gone so far as to persuade black activists “to drop their request for equal resources [in the form of aid to compensatory education], and instead, to demand an end to racially restrictive attendance zones. . . .”<sup>36</sup> Activists in other predominantly black urban school districts followed a similar path, emphasizing racial desegregation *rather* than compensatory education as the way to foster equal opportunities in schools.

Even as federal aid for compensatory programs was beginning to flow into urban districts, the Congress of Racial Equality (CORE) was starting to organize major school boycotts to protest “de facto” segregation. Boycotts hit such cities as Boston, New York, and San Francisco, and black leaders in Massachusetts, New York, California, and New Jersey convinced state lawmakers to require desegregation in the public schools. Yet, at the same time, the ESEA “created a financial incentive for northern districts to maintain concentrations of poor, black children” in certain schools in order for states to maximize their eligibility for federal grants.<sup>37</sup> Policy-makers therefore faced a dilemma: they could pursue maximum funding for

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disadvantage of parochial children because . . . the determination of allocations is still by the state. We’re a little gun shy of chief state school officers because of their historical opposition to aid to private schools.” Moreover, Donohue stated, the block grant idea was antithetical to the purpose of the ESEA “since it takes the thrust away from being a poverty program.” See *Congressional Quarterly Almanac* (Washington, D.C. : Congressional Quarterly News Features, 1967, 1972, 1976, 1981) and *Congress and the Nation* (Washington, D.C. : Congressional Quarterly Service, 1967, 1972, 1976, 1981-1984).

<sup>35</sup> Shortly after the Quie Amendment was defeated, an amendment was adopted from Representative Edith Green (D-Ore.). Green’s Amendment limited the block grant idea to regional education centers under Title III of ESEA. Some objected that states were not “innovative” enough to handle the education centers. John Gardner and Harold Howe II urged the Senate to reject the Green amendment. Howe said Title III was perhaps the most important part of ESEA and was “just beginning to produce results.” To turn Title III over to the states meant that the federal role in education “would not be fulfilled adequately.” Howe also noted “a tendency in many states to favor the needs of rural districts over those of the large metropolitan areas,” and he asserted that Title III grants were targeted at “programs satisfying a uniquely national need.” Many states, he concluded, were “simply not yet prepared to take over the administration of Title III.” Ultimately, the conference committee altered Green’s proposal to allow for a two-year waiting period before Title III funds passed directly to the states. A similar proposal was adopted for Title V funds to state education agencies. Green’s amendment passed the House by a vote of 230 to 185, and Johnson signed the bill into law on January 2, 1968. See *Congressional Quarterly Almanac* (Washington, D.C. : Congressional Quarterly News Features, 1967, 1972, 1976, 1981) and *Congress and the Nation* (Washington, D.C. : Congressional Quarterly Service, 1967, 1972, 1976, 1981-1984).

<sup>36</sup> Dougherty, 20.

<sup>37</sup> Dougherty, 23.

compensatory education and risk losing the advantages of racial integration, or they could pursue racial integration but risk losing the advantages of concentrated aid.

In 1966, in an attempt to resolve this dilemma, professor James Coleman and others at The Johns Hopkins University were commissioned by U.S. Commissioner of Education Harold Howe to conduct a major study of the question: which strategy was more likely to equalize educational opportunities for poor minority students—compensatory education or racial integration? Coleman’s federally funded analysis, titled *Equality of Educational Opportunity*, concluded, first, that racial integration did little to boost academic achievement in urban schools. “Our interpretation of the data,” Coleman wrote, “is that racial integration per se is unrelated to achievement insofar as the data can show a relationship.” Coleman added, however, that compensatory education—whether offered in racially integrated *or* in racially segregated schools—was similarly unlikely to improve achievement levels. As Coleman explained, “differences in school facilities and curricula, which are made to improve schools, are so little related to differences in achievement levels of students that, with few exceptions, their efforts [or the *effects* of different classes or curricula] fail to appear in a survey of this magnitude.”<sup>38</sup>

Some of the studies done as part of a re-analysis of Coleman’s data at Harvard reached similar conclusions, suggesting that the best way to improve academic achievement was neither to integrate students nor to offer compensatory programs but, rather, to raise overall family income. According to the work of sociologist David Armor, “programs which stress financial aid to disadvantaged black families may be just [as] important, if not more so, than programs aimed at integrating blacks into white neighborhoods and schools.” Still another study concluded that the “racial composition of the school . . . does not have a substantial effect [on academic achievement]—not nearly so strong as the social class composition of the school.”<sup>39</sup> In other words, when it came to improving academic achievement in the inner city, what mattered most was neither special programs nor racial integration but, rather, family background and socio-economic status. This conclusion became more and more established over time, but policies at the state and federal level nonetheless continued to focus primarily on narrow *school*-based reforms.

For example, in 1968, in addition to Title I programs, the Johnson administration embraced the idea of federal aid for bilingual programs to serve a rising number of non-English-speaking immigrant students. The federal Immigration and Nationality Act of 1965 had eliminated “national-origin quotas” that had been in place for more than forty years and had allowed unprecedented numbers of immigrants to enter the United States, especially from Asia and Latin America. In the mid-1960s, a number of states, including Florida, Texas, Arizona, and New Mexico had begun to experiment with local bilingual programs, and, in 1967, Congress held hearings on the possibility of directing federal aid toward these programs. At the end of that year, Congress added Title VII, the Bilingual Education Act, to the ESEA. “The purpose of this [bill],”

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<sup>38</sup> All quoted in Jeffrey, 154, 148, 151. See also James S. Coleman, et al. *Equality of Educational Opportunity* (Washington, D.C.: Government Printing Office, 1966).

<sup>39</sup> All quoted in Jeffrey, 154, 148, 151.

the Senate subcommittee on education asserted, “is to provide a solution to the problem of those children who are educationally disadvantaged because of their inability to speak English.”<sup>40</sup>

Aimed at immigrant children whose parents earned less than \$3,000 a year, Title VII provided start-up funds for “exemplary pilot or demonstration projects in bilingual and bicultural education in a variety of settings.”<sup>41</sup> Aid, however, was limited: of the 300 applications for aid to bilingual education in 1968, fewer than 80 programs were funded. Also, Title VII aid to bilingual programs faced some of the same problems that Title I aid to compensatory education had faced—particularly in the realm of racial desegregation. Congress initially prohibited the use of Title VII grants for foreign-language instruction, which meant that English-speaking students could not be placed in bilingual classes (for example, to learn Spanish, Chinese, Haitian-Creole, etc.). This policy, however, virtually guaranteed that Title VII programs would be racially imbalanced. As a result, Congress later changed the Title VII regulations to allow the placement of both English-speaking and non-English-speaking students in federally funded bilingual programs.<sup>42</sup> (Persistent racial isolation in bilingual and other compensatory education programs has continued to dog the ESEA, because so many eligible students are African American and Hispanic American.)

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<sup>40</sup> Quoted in Susan Gilbert Schneider, *Revolution, Reaction, or Reform: The 1974 Bilingual Education Act* (New York: Las Americas Publishing Company, 1976), 23-24

<sup>41</sup> Quoted in Schneider, 23-24.

<sup>42</sup> See Gerald C. Cumner and Peter W. Greenwood, “Bay City” in *Federal Programs Supporting Educational Change, Vol. III: the Process of Change, Appendix C. Innovations in Bilingual Education*; R-1589/3-HEW (April 1975), IV-61– IV-62. “During the third year [1971-1972], major change was mandated by the federal program office when they began to worry about the segregation effect [of bilingual classes]. At this time, they required the Bay City project to include at least 40 percent Anglos [in each bilingual class]. Although that ratio has not persisted, the project has remained open to native English speakers.” In order to meet the federal requirement for 40 percent “Anglo” students in each bilingual class, many schools counted black English-speakers as “Anglos.” As the *Boston Herald* noted, “English-speaking students, largely black children from the area, were placed in the bilingual classes.” “[?],” *Boston Herald* (24 January 1971). Newspaper clipping in the files of the Beebe Communications Library, Boston University. Yet, when it became clear that “Anglos” did not have to be white—but only English-speaking—many Hispanic parents began to put their second-generation English-speaking children into bilingual programs. As Cumner and Greenwood explained, “In the fifth year, . . . Hispanic parents were putting their non-Spanish-speaking kids into the program to learn fluency in Spanish. These kids [were] typically from other Bay City schools that don’t have bilingual programs. They come into the attendance area and opt for a bilingual program . . . even though they may be native English speakers.” Thus, the issue of “segregation” in bilingual programs was difficult to untangle, because it was not entirely clear what *segregation* meant in a bilingual context.

## The Nixon Years

Indeed, the issue of racial imbalance in public schools became more prominent during the presidential administration of Richard Nixon—somewhat ironically, the most active presidential administration since World War II in terms of a steadily expanding federal role in public education. Shortly after Nixon’s inauguration in late January, 1969, the new president appointed James E. Allen, Jr., former state commissioner of education in New York, to serve as both federal commissioner and assistant secretary of education in the Department of Health, Education, and Welfare (HEW). Allen was no stranger to the challenges of public school politics, including the politics of compensatory education and the politics of racial desegregation. He had cut his desegregation teeth as early as 1963 when, as New York state commissioner, he had imposed the nation’s first racial-balance plan on schools in suburban Malverne, N.Y. In defending this action, he commented that “Segregated schools are a deterrent to full equality of opportunity, and, personally, I think this is true for white as well as Negro children.”<sup>43</sup>

Pursuing racial desegregation was, however, much more complicated than it first appeared. Five years later, in 1968, the administration of the New York City school district was decentralized by legislative act. Stressing a need for “community advisory councils” to guide the implementation of state and federal policies designed to raise student achievement, the state legislature turned power over to thirty-three locally elected school boards and made them responsible for promoting more effective programs. By this time, demands for “community control” had outpaced demands for racial balance, so New York put parents and other locally elected school board members in charge of their elementary and middle schools. In 1969, when Allen became federal commissioner under Nixon, he *required* schools receiving Title I aid to include

### Political Snapshot

**President: Richard M. Nixon (R) 1969–1972 First Term**

Secretary of H.E.W.: Robert H. Finch  
 Elliot L. Richardson (1970)  
 Commissioner of Education: James E. Allen, Jr.  
 Sidney P. Marland, Jr. (1970)

**Major education actions:**

1969 – Educational Television and Radio Amendments  
 1969 – Elementary & Secondary Education Amendments  
 1970 – National Commission on Libraries and Information Science Act [Note 4]  
 1970 – Experimental Schools Program (ESP) and National Institute of Education (NIE) launched  
 1972 – Emergency School Aid Act  
 1972 – Higher Education Act reauthorization including NIE  
 1972 – Title IX of Education Amendments [Note 1]

**91st Congress (1969-1970)**

**SENATE: 57-Dem, 43-Rep.**  
 Vice-President: Spiro T. Agnew (R)  
 Majority Leader: Mike Mansfield (D-MT)  
 Minority Leader: Everett M. Dirksen (R-IL), 1969.  
 Hugh D. Scott, Jr. (R-PA), 1969-1970.  
 Committee: Labor and Public Welfare  
 Chair: Ralph Yarborough (D-TX)  
 Ranking Minority Member: Jacob K. Javits (R-NY)

**HOUSE: 243-Dem, 192-Rep.**

Speaker: John W. McCormack (D-MA)  
 Majority Leader: Carl B. Albert (D-OK)  
 Minority Leader: Gerald R. Ford (R-MI)  
 Committee: Committee on Education and Labor  
 Chair: Carl D. Perkins (D-KY)  
 Ranking Minority Member: William H. Ayres (R-OH)

**92nd Congress (1971-1972)**

**SENATE: 54-Dem, 44-Rep, 2-Other**  
 Vice-President: Spiro T. Agnew (R)  
 Majority Leader: Mike Mansfield (D-MT)  
 Minority Leader: Hugh D. Scott, Jr. (R-PA)  
 Committee: Labor and Public Welfare  
 Chair: Harrison A. William, Jr. (D-NJ)  
 Ranking Minority Member: Jacob K. Javits (R-NY)

**HOUSE: 255-Dem, 180-Rep.**

Speaker: Carl B. Albert (D-OK)  
 Majority Leader: Hale Boggs (D-LA)  
 Minority Leader: Gerald R. Ford (R-MI)  
 Committee: Committee on Education and Labor  
 Chair: Carl D. Perkins (D-KY)  
 Ranking Minority Member: Albert H. Quie (R-MN)

(See *The Ford Years* for snapshot of Nixon’s second term.)

<sup>43</sup> See <http://www.angelfire.com/ny5/lmemories/JamesEAllen/JEAtheman.html>.

parents “in the early stages of program planning and in discussions concerning the needs of the children in the various eligible attendance areas.”<sup>44</sup> Allen thus built his federal commissionership around the goal of making inner-city schools “effective” *despite* their continuing racial imbalance—a goal that struck some as overly acquiescent and others as politically pragmatic.

Allen’s concern for the “effectiveness” of federally funded programs was, in part, a response to a barrage of criticism that bombarded the federal office of education in the spring of 1969. In March of that year, two policy analysts—Ruby Martin of the Southern Center for Studies in Public Policy and Phyllis McClure of the NAACP Legal Defense and Education Fund—released a scathing critique of Title I. Their study, *Title I of ESEA: Is It Helping Poor Children?*, asserted that a number of states had misused Title I funds and, in the process, had undermined the program’s goals. They discovered, for example, that Title I funds had not been equitably distributed to urban schools; instead, funds had flowed disproportionately to suburban districts.<sup>45</sup> Furthermore, when they audited Title I programs, they found terrible data-collection practices: “inadequate time and attendance records, lack of substantiation of overtime pay to [Title I] teachers, inadequate accounting procedures covering contractual services, inadequate equipment controls, and unremitted unused funds.”<sup>46</sup>

Most disappointing of all, Martin and McClure saw little attempt to document the connection between Title I expenditures and academic achievement among Title I’s poor minority recipients. Since federal evaluation forms had not required schools to show a direct link between Title I expenditures and classroom instruction—let alone between expenditures and achievement—schools did not collect this information. As two scholars, David Cohen and Tyll van Geel, noted in a review of Title I grants, “The analysis in the state [program evaluation] report is meaningless . . . because the data it collected could serve no conceivable evaluative purpose.” Growing demands for better evidence of Title I “effectiveness” led federal commissioner of education Allen, together with Senator Daniel Patrick Moynihan (D-NY) to propose a new National Institute of Education (N.I.E.) to analyze all federal education programs and, specifically, to study the link between federal aid and student performance in inner-city schools.<sup>47</sup> In short, local “accountability” in the use of federal funds would henceforth be measured in terms of *academic achievement*.<sup>48</sup>

This notion of federal supervision of student performance in specific subjects mentioned in the original Title I in 1965, together with the notion of linking aid to achievement, was, in some ways, new. Previous administrations had not required direct evidence of a link between federal

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<sup>44</sup> Quoted in Jerome T. Murphy, “Title I of ESEA: The Politics of Implementing Federal Education Reform,” *Harvard Educational Review* 40:4 (February 1971), 46.

<sup>45</sup> Washington Research Project, *Title I of ESEA: Is It Helping Poor Children?* (Washington, D.C., 1969).

<sup>46</sup> Jerome T. Murphy, “Title I of ESEA: The Politics of Implementing Federal Education Reform,” *Harvard Educational Review* 40:4 (February 1971), 55.

<sup>47</sup> Quoted in Murphy, 55-56.

<sup>48</sup> See Cross, 52. In 1973, representative Albert Quie of Minnesota “pushed his concept of helping those most in academic need, whether they were in a high poverty school or not. Although he lost at every turn, by mostly partisan votes, his advocacy for a focus on academic need rather than on the assumption that poverty and academic deficiencies were inextricably linked was relentless.” The defeat of Quie’s idea was tied, in part, to the fact that targeting aid at academically below-average students gave schools a perverse financial incentive to maximize the number of students who fit this description.



aid and student achievement—perhaps because asking for such evidence might lead to demands for “enough” resources to ensure that students had “sufficient opportunities” to reach particular levels of achievement, as documented by standardized test scores. Nonetheless, Allen was determined to show that aid was not being wasted on ineffective programs. In keeping with his emphasis on effectiveness, he asked Congress to authorize a National Assessment of Educational Progress (NAEP), a national system of tests designed to track variations and fluctuations in student achievement throughout the country over time. Allen called it a longitudinal, census-like system and, as scholar Lorrie Shepard has noted, “likened its purpose to the collection of health statistics on the incidence of heart disease and cancer for different age and occupational groups.”<sup>49</sup> By collecting achievement data, he hoped, schools would see where they needed to improve.

The contract for overseeing NAEP was given to the Education Commission of the States (ECS, which commissioner Allen, together with James Conant and Terry Sanford, helped to found)—a non-profit organization consisting of state governors, chief state school officers, and state legislators—in the hope of guarding the test from criticism for being a tool of federal control in schools. According to Shepard, “The independence of [NAEP] from specific educational programs or political jurisdictions was further assured by both its data collection methods and administrative structure. . . . [Test-takers] were sampled to represent regions of the country and urban, suburban, or rural districts—rather than specific states or districts.” The idea was to assess the educational progress of the nation as a whole, to be presented through multi-state regions. Indeed, reporting results by individual students, school, district, or state was explicitly prohibited, and the NAEP in its original form had no punitive power over low-performing schools. For this reason, NAEP was not used directly to evaluate the “effectiveness” of any particular federal program. Yet, as Shepard has commented, “The very features of [the NAEP] that were designed to shelter it from politics were later blamed for the lack of public interest in the assessment’s results.”<sup>50</sup> (Over time, NAEP was changed to enable reporting state-level—and some urban district-level—results.)

For commissioner Allen, the challenge was to prove the effectiveness of federally funded programs and, simultaneously, to push for racially desegregated schools. Allen believed that federal support for instructional programs should proceed side by side with the pursuit of racial integration. Yet, on this point, he and the president did not see eye to eye. Nixon tended to view federal support for compensatory education as a *substitute* for racial desegregation, and disagreement between Nixon and Allen on this issue grew more and more heated over time. Before Nixon took office in 1969, the federal courts had started to take a much more aggressive stance toward the issue of segregation in schools. In the case of *Green v. New Kent County School Board*, the Supreme Court ruled that public schools in Virginia had an “affirmative duty” to end racial segregation “root and branch” and had to establish a racially “unitary” school system without delay. Not surprisingly, this ruling provoked a bitter reaction from segregationists in the South—and their anger escalated rapidly over the next several years.

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<sup>49</sup> Lorrie A. Shepard, “The Contest Between Large-Scale Accountability Testing and Assessment in the Service of Learning, 1970-2001” (Unpublished paper, 2002).

<sup>50</sup> Lorrie A. Shepard, “The Contest Between Large-Scale Accountability Testing and Assessment in the Service of Learning, 1970-2001” (Unpublished paper, 2002).

Some credited the Nixon administration with the quicker pace of desegregation in the South in the late 1960s and early 1970s, but credit must go more appropriately to the federal courts and to Congress. Moreover, it was in these years that desegregation began to move from the South to the North. In 1970, representative John Stennis (D-MS), who had been perturbed that southern schools were under orders to integrate while northern schools remained racially imbalanced, introduced an amendment to the ESEA to extend desegregation requirements to schools affected by both *de jure* and *de facto* segregation (i.e., to both the South and the North). Despite objections from Senators Jacob Javits (R-NY) and Walter Mondale (D-MN), who feared the Stennis amendment would simply slow the process of desegregation in the South, and from Richard Nixon, who committed himself only to *de jure* desegregation and favored “neighborhood schools” and “school choice” in the North, the Stennis amendment passed. Under the new ESEA, then, parents lost the right to choose schools for their children if the aggregate effect of their choices resulted in racially imbalanced enrollments.<sup>51</sup>

In 1971, the Supreme Court ruled unanimously in the case of *Swann v. Charlotte-Mecklenburg Board of Education* that the public schools in Charlotte and Mecklenburg, North Carolina, could *require* pupils to be bused outside their residential neighborhoods in order to achieve racially balanced enrollments. This decision stopped short, however, of declaring that racial balance was constitutionally mandated in order to provide “equal educational opportunities” to all children and thus left open the possibility that schools could find other ways to meet this standard. It was this question—the question of court-ordered busing as a way to achieve racial balance and, thus, equal opportunities—that received increasing scrutiny in the early 1970s. Nixon made much of this controversial issue in his run for re-election in 1972, employing a so-called southern strategy to exploit racial antagonisms. When segregationist George Wallace won the Democratic primary in Florida and threatened to draw voters away from the Republican ticket, Nixon called on Congress to impose a moratorium on local busing plans—a move that pulled southern voters back to his camp. (Partisan politics have long played a role in education policy.)

The election of 1972 left no doubt that busing was one of the most contentious political issues of the day. This issue returned to the U.S. Supreme Court in 1973 in the case of *Keyes v. Denver School District No. 1*. In this case, which involved both black and Hispanic students as plaintiffs, the court ruled for the first time on the issue of racial segregation in northern school systems—that is, systems with no history of explicit laws requiring the segregation of races in public schools. In the court’s *Keyes* ruling (the first desegregation case in which the court did not reach a unanimous decision), a five-justice majority held that the absence of explicit segregationist laws did not preclude a finding of unconstitutional segregation in a northern district. The majority also held that a failure to provide equal educational opportunity to all students, regardless of race, color, or national origin, constituted “intentional state action” in violation of the equal protection clause of the Fourteenth Amendment. By linking racial imbalance to “intentional state action,” *Keyes* saw what had once been considered *de facto* segregation as *de jure* segregation.

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<sup>51</sup> After the Stennis amendment passed, representative Charles Jonas (R-N.C.) introduced an amendment to give parents the right to send their children to “schools of their choice,” and representative Jamie Whitten (D-Miss.) proposed an amendment to bar “forced” busing to or from school already deemed “desegregated” under the Civil Rights Act of 1964, but both of these amendments failed.

As Justice Douglas wrote, “there is, for purposes of the ‘equal protection’ clause of the Fourteenth Amendment as applied to school cases, no difference between ‘de facto’ and ‘de jure’ segregation. The school board is a state agency, and the lines it draws, the locations it selects for school sites, the allocation it makes of students, [and] the budgets it prepares are state action for Fourteenth Amendment purposes.”<sup>52</sup> *Keyes* thus had clear implications for the pursuit of racially balanced northern schools—and pursuing such schools immediately. At the same time, however, the court’s minority asked if *every* racially imbalanced school would now be *required* to become racially balanced. As Justice Powell noted in a dissenting opinion, “Every act of a school board and school administration, and indeed every failure to act where affirmative action is indicated, must now be subject to scrutiny. . . . This will lead inevitably to uneven and unpredictable results, to protracted and inconclusive litigation, to added burdens on the federal courts, and to serious disruption of individual school systems.” In other words, pursuing racial balance was not simply a matter of busing students from place to place; it was also a matter of counteracting demographic and political forces that were, in many cases, beyond school officials’ control (e.g. state and federal housing policies).<sup>53</sup>

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<sup>52</sup> *Keyes v. School District No. 1, Denver, Colorado* 413 U.S. 189 (1973). The view that school officials had “intentionally segregated” the Denver public schools was still new in litigation concerning northern school systems. See John C. Hogan, *The Schools, The Courts, and the Public Interest*, 2<sup>nd</sup> ed. (Lexington, Mass.: Lexington Books, 1985), 30. Before *Keyes*, the prevailing precedent with respect to northern schools was *Gomperts v. Chase* 404 U.S. 1237 (1971) in California, and, under *Gomperts*, Hogan explained, any number of “state actions” could contribute to racial isolation without necessarily leading to a finding of intentional segregation or discrimination. As Hogan wrote, “A state-built and publicly financed freeway that effectively isolates blacks from whites and results in a separate and predominantly black high school; the actions of state planning groups that fashion and build the black community around the school; realtors, licensed by the state, who keep ‘white property’ white and ‘black property’ black; banks, chartered by the state, that shaped the policies that handicapped blacks in financing homes other than in black ghettos; residential segregation, fostered by state-enforced restrictive covenants, that results in segregated schools—whether [in the words of Justice Douglas in *Gomperts v. Chase*] ‘any of these factors add up to de jure segregation in the sense of that state action we condemned in *Brown v. Board of Education* is a question not yet decided.” After *Keyes*, however, each of these “state actions” could potentially lead to a finding of “intentional segregation” in a northern school system, though not all the justices in *Keyes* accepted this broad view of “intent.”

<sup>53</sup> *Keyes v. School District No. 1, Denver, Colorado* 413 U.S. 189 (1973). Powell’s complete treatment of this concern ran as follows: “Every act of a school board and school administration, and indeed every failure to act where affirmative [state] action is indicated, must now be subject to scrutiny. The most routine decisions with respect to the operation of schools, made almost daily, can affect in varying degrees the extent to which schools are initially segregated, remain in that condition, are desegregated, or—for the long term future—are likely to be one or the other. These decisions include action or nonaction with respect to school building construction and location; the timing of building new schools and their size; the closing and consolidation of schools; the drawing or gerrymandering of student attendance zones; the extent to which a neighborhood policy is enforced; the recruitment, promotion and assignment of faculty and supervisory personnel; policies with respect to transfers from one school to another; whether, and to what extent, special schools will be provided, where they will be located, and who will qualify to attend them; the determination of curriculum, including whether there will be ‘tracks’ that lead primarily to college or to vocational training, and the routing of students into these tracks; and even decisions as to social, recreational, and athletic policies.” Justice Powell concluded in his *Keyes* dissent that, “In *Swann*, the Court did not have to probe into segregative intent and proximate cause with respect to each of these ‘endless’ factors [that might lead to racial imbalance]. The basis for its de jure finding there was rooted primarily in the prior history of the desegregation suit. But, in a case of the present type, where no such history exists, a judicial examination of these factors will be required under today’s decision. This will lead inevitably to uneven and unpredictable results, to protracted and inconclusive litigation, to added burdens on the federal courts, and to serious disruption of individual school systems. In the absence of national and objective standards, school boards and administrators will remain in a state of uncertainty and disarray, speculating as to what is required and when litigation will strike.”

In 1974, the Supreme Court's consideration of racial segregation continued in the case of *Milliken v. Bradley*, which involved the public schools of Detroit and surrounding suburbs. In this case, the court's recent pro-active approach to racial desegregation came to an abrupt end—partly as a result of the concerns that Powell and others had raised in *Keyes*. While maintaining that officials in Detroit had an “affirmative duty” to pursue racial balance in the city's public schools, the court in *Milliken* denied the city's request to include the surrounding suburbs in its busing plan. Instead, the court insisted that the boundaries of the city formed the outer limits of any desegregation order. In lieu of any “metropolitan” busing plan that the city might propose as a way to ensure racial balance in its public schools, the court instead ordered the city to equalize educational opportunity by spending more money on compensatory education programs for low-income minority student in the inner city. In effect, the court ordered Detroit to pursue compensatory education as a substitute for racial integration (a strategy the Nixon administration had long endorsed).

The *Milliken* decision reflected the growing tension—among the public as well as members of Congress—over the issue of court-ordered busing. In February, 1974, partly in reaction to the *Milliken* decision, the Democrat-controlled Congress passed a so-called Equal Educational Opportunity Act, which stated that, “after June 30, 1974, no court of the United States shall order the implementation of any plan to remedy a finding of de jure segregation which involves the transportation of students, unless the court first finds that all alternative remedies [including compensatory education] are inadequate.”<sup>54</sup> To enforce these provisions, Congress barred the use of federal funds to pay for court-ordered busing. (Two years earlier, Congress passed the Emergency School Aid Act, which helped local schools implement voluntary programs to facilitate desegregation. Magnet schools, for example, received substantial financial aid under the ESAA to add courses in specific subjects and thereby draw white students into predominantly minority schools.)

Also in 1974—in keeping with the idea of compensatory programs as a substitute for racial integration—Congress passed a series of Education Amendments to the ESEA. These amendments dramatically expanded federal aid to compensatory programs in low-income areas. They funded dropout prevention projects, school health services, gifted children's programs, women's equity programs, career education, arts education, metric education, consumer education, ethnic heritage centers, federal programs for migratory, delinquent, and Native American pupils, and dozens of other programs. The amendments increased overall federal authorizations for education by 23 percent—from \$2.8 billion in 1974 to \$3.5 billion in 1975—

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<sup>54</sup> See U.S. Commission on Civil Rights, *Equal Educational Opportunity and Nondiscrimination for Students with Limited English Proficiency: Federal Enforcement of Title VI and Lau v. Nichols* (November 1997), 83. “President Nixon specifically addressed his administration's goals with regard to equal educational opportunity when he first proposed the Equal Educational Opportunities Act [in] 1972. He stated that the statutory purpose would be to shift the emphasis on busing as a remedial scheme for civil rights violations and to focus instead on the quality of education programs as a means of remedying past civil rights violations and at the same time preventing new ones. He suggested that an emphasis on the quality of education programs would accomplish civil rights goals far more effectively than the remedy of busing. With this legislation, he sought to portray equal educational opportunity as an *alternative* to busing.” See “Educational Opportunity and Busing: The President's Address to the Nation Outlining his Proposals,” 8 Weekly Comp. Pres. Doc. 1 590 (16 March 1972).

and, in so doing, bolstered the idea that carefully targeted compensatory programs were essential to equal opportunities in the nation's schools. All told, the Education Amendments of 1974 allocated more than \$12 billion over four years to categorical programs in public schools.

The most prominent of these programs was, of course, Title I, which distributed \$1.8 billion, or 51 percent of the total, in 1975. Another prominent program, Title VII for non-English-speaking students, distributed \$100 million in 1975—but also entailed some important regulatory changes. Title VII had originally fit with the anti-poverty rationale of the ESEA, but the Education Amendments of 1974 removed the poverty criterion for Title VII eligibility. Grants thereafter flowed to non-English-speakers regardless of their family income. In effect, non-English-speakers received funds not because of economic disadvantages but, rather, simply because of linguistic deficiencies. They did not have to be poor to receive support. The same principle applied to other groups of disabled pupils, including mentally retarded, physically handicapped, and emotionally disturbed students, all of whom received aid regardless of family income. Indeed, one of the most significant shifts in federal aid after 1974-1975 was the addition of non-poverty-related to poverty-related criteria for eligibility.

At the same time, the Education Amendments of 1974 continued to allow federal funds to flow to racially imbalanced schools. Perhaps nowhere was this problem more evident than it was in the case of the Bilingual Education Act of 1974. Four years earlier, in 1970, the federal Office of Civil Rights had issued a memorandum requiring all school districts with five percent (or more) national-origin minority students to develop “special programs” to foster these students’ acquisition of English. The memo held that a failure to provide equal educational opportunities to non-English-speaking students—that is, a failure to offer them effective programs to compensate for their language deficiencies—would be considered a violation of Title VI of the Civil Rights Act. The memo added that any school found discriminating against non-English-speaking (or “Spanish-surnamed”) students on the basis of their language ability—a proxy for national origin—would lose its federal aid under both Title VII and Title I as well as all other federal aid-to-education programs.

Perhaps most important of all, the memo from the Office of Civil Rights implied that the best way to equalize opportunities for non-English-speakers was to offer “special programs” *set apart* from regular English-speaking classes. The impact of this argument could not be overstated. For the first time in any federally funded education program, *isolated* programs inhabited largely by minority students were considered a “civil right.” The aims of this memorandum were upheld by the Supreme Court in 1974 in the case of *Lau v. Nichols*, which concerned Chinese-speaking students in San Francisco. In this case, the court concluded that “there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum, for students who do not understand English are effectively foreclosed from any meaningful education.”<sup>55</sup> The court based its ruling in this case *not* on the Fourteenth Amendment, which might have required classroom integration for non-English-speaking and national-origin-

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<sup>55</sup> *San Antonio Independent School District v. Rodriguez* 411 U.S. 1 (1973) and *Lau v. Nichols* 414 U.S. 563 (1974). See also William H. Clune, “New Answers to Hard Questions Posed by *Rodriguez*: Ending the Separation of School Finance and Educational Policy by Bridging the Gap Between Wrong and Remedy” 24 *Connecticut Law Review* 721, 735 (1992); John L. Strobe and Cathy H. Broadwell, “How P.L. 94-142 Has Fared in the Supreme Court,” *West’s Education Law Reporter* 58:1 (15 March 1990), 13-28; and H. Rutherford Turnbull, *Free Appropriate Public Education: The Law and Children With Disabilities*, 4<sup>th</sup> ed. (Denver: Love Publishing Co., 1993).

minority group students, but, rather, on the Civil Rights Act, which allowed for the isolation of minority students with language deficiencies so long as their isolation was “temporary” and promised better educational results.<sup>56</sup>

Adding to the federal litigation on this issue in 1974 was a consent decree in New York City in the case of *Aspira v. Board of Education of the City of New York*. In this case (initiated in 1972), a federal court ruled that New York City’s public schools must provide a transitional bilingual education program in which students were taught at least part of the day in their native language—even if this approach meant students would be temporarily isolated from the regular classroom. In support of New York City’s bilingual program and others like it, Congress, in the Bilingual Education Act of 1974, directed aid specifically to schools with high concentrations of non-English-speaking (and, typically, minority) students. In this way, cases such as *Lau* and *Aspira*, coupled with a steady rise in federal aid for specialized programs for minority students, gave schools an incentive to maximize enrollments in aid-eligible programs—even if this strategy did not foster racial integration. In urban areas with large numbers of minority students and high demand for specialized services, this dilemma was difficult to resolve.

A decade after the Civil Rights Act and the Elementary and Secondary Education Act and two decades after the Supreme Court’s decision in *Brown v. Board of Education*, the meaning of the phrase *equal educational opportunity* still was not entirely clear. What *was* clear, however, was the rapidly growing *cost* of public schools throughout the nation. Despite the infusion of federal aid that had followed the Education Amendments of 1974, local districts struggled to find the resources needed to meet the demand for specialized educational services. The effects of stagflation (that is, high inflation combined with high unemployment) and a prolonged recession in the early 1970s had made schools’ financial problems ever-more urgent. It was in this context that, in 1971, a series of lawsuits began to address the issue of school funding. The first to attract attention was *Serrano v. Priest*, in which the state supreme court in California ruled that the state formula for distributing school aid unconstitutionally discriminated against students in low-income districts.

In *Serrano v. Priest*, the court held that existing state financial support for schools was “inadequate” to meet the educational needs of all children. In the words of the state supreme court, “We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child’s [public] education a function of the wealth of his parents and his neighbors. Recognizing, as we must, that the right to an education in our public schools is a fundamental interest which cannot be conditioned on [individual] wealth, we can discern no compelling state purpose necessitating the present method of financing. We have concluded, therefore, that such a system cannot withstand constitutional challenge and must fall before the equal protection clause.”<sup>57</sup> This ruling was a landmark in school-finance litigation, and it struck

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<sup>56</sup> See Martin H. Gerry and J. Martin Benton, “Section 504: The Larger Umbrella” in Joseph Ballard, Bruce A. Ramirez, and Frederick J. Weintraub, eds., *Special Education in America: Its Legal and Governmental Foundations* (Reston, Va.: Council for Exceptional Children, 1982). “Underlying [Pottinger’s bilingual education] memorandum was a little-noticed provision of the Title VI regulation which provides basic reinforcement for the radical proposition which would follow both in the Section 504 regulations and in P.L. 94-142 that the *effect* of educational practices on the learning of children is itself a major civil rights issue” (italics added).

<sup>57</sup> *Serrano v. Priest*, 5 Cal. 3d 584; 487 P.2d 1241; 96 Cal. Rptr. 601 (30 August 1971). In its *Serrano* decision, California’s supreme court asserted that wealth was a “suspect classification” (akin to race or national origin)

fear into the hearts of school officials in other states, who wondered how they might have to alter their own state-aid formulas to meet the (apparent) constitutional standard of locally equivalent financial resources as a “fundamental right.”

The class action in *Serrano* extended the classification of “wealth discrimination” to every child in the state except those who lived in the one district offering “the greatest educational opportunity of all school districts within California.”<sup>58</sup> In this way, it implied that, in order to avoid charges of discrimination, the state would have to aid each school up to the level of the one with the highest expenditures per pupil. The ruling in *Serrano v. Priest* prompted similar litigation in other states—and, eventually, one of these suits made it to the U.S. Supreme Court. In 1973, the high court heard arguments in the case of *San Antonio Independent School District*

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requiring strict scrutiny under the equal protection clause of both the federal and the state constitution. In order to make this assertion, the court had to find that different levels of funding resulted in different levels of educational opportunity (as measured by educational outcomes or results). This finding was difficult to support. “Although we recognize that there is considerable controversy among over the relative impact of educational spending and environmental influences on school achievement,” the court wrote, “we note that the several courts which have considered contentions [that spending does *not* affect outcomes] have uniformly rejected them.” Citing the opinion of a federal district court in Illinois in the case of *McInnis v. Shapiro* (293 F. Supp. 327, 15 November 1968), the court in *Serrano* stated that, “Presumably, students receiving a \$1,000 education are better educated than [sic] those acquiring a \$600 schooling.” The court also cited *Hobson v. Hansen* (269 F. Supp. 401, 1967), in which judge J. Skelly Wright noted that “comparative per pupil figures do refer to actual educational advantages in the high-cost schools, especially with respect to the caliber of the teaching staff.” The *Serrano* decision conceded that the “extent to which high spending . . . represents actual educational advantage is, of course, a matter of proof [presumably in the form of outcomes or results as measured by test scores]” but concluded that California’s public schools arbitrarily placed students who lived in poor districts at an educational disadvantage. The court thus concluded that California classified students by wealth and, having no compelling reason to do so, denied them equal educational opportunities. In response to the defendants’ argument that giving the state the authority to determine local school spending would “spell the destruction of local government,” the court asserted that education was a “fundamental interest” of the state. The court asserted that “The California public school financing system, as presented to us by plaintiffs’ complaint supplemented by matters judicially noticed, since it deals intimately with education, obviously touches upon a fundamental interest. For the reasons we have explained in detail, this system conditions the full entitlement to such interest on wealth, classifies its recipients on the basis of their collective affluence, and makes the quality of a child’s education depend upon the resources of his school district and ultimately upon the pocketbook of his parents. We find that such financing system as presently constituted is not necessary to the attainment of any compelling state interest. Since it does not withstand the requisite ‘strict scrutiny,’ it denies to the plaintiffs and others similarly situated the equal protection of the laws. If the allegations of the complaint are sustained, the financial system must fall and the statutes comprising it must be found unconstitutional.”

<sup>58</sup> *Serrano v. Priest*, 5 Cal. 3d 584; 487 P.2d 1241; 96 Cal. Rptr. 601 (30 August 1971). See also Massachusetts Department of Education, “Schools for the City: Ten Months After *Serrano*: The School-Finance Dilemma” (1972). The *Serrano* court shied away from a decision linking educational expenditures to students’ individual educational needs (an implicit justification in many states for directing aid to urban areas). Citing *McInnis v. Shapiro* (293 F. Supp. 327, 15 November 1968), the court noted that “the *McInnis* plaintiffs repeatedly emphasized ‘educational needs’ as the proper standard for measuring school financing against the equal protection clause. The district court found this a “‘nebulous concept’—so nebulous as to render the issue nonjusticiable for lack of “discoverable and manageable standards.” In fact, the nonjusticiability of ‘educational needs’ was the basis for the *McInnis* holding. . . .” See also John E. Coons, William H. Clune III, and Stephen D. Sugarman, *Private Wealth and Public Education* (Cambridge, Mass.: Harvard University Press, 1970); Stephen R. Goldstein, “Interdistrict Inequities in School Financing: A Critical Analysis of *Serrano* and Its Progeny,” *University of Pennsylvania Law Review* 120 (1972), 504-544; A. Alan Post and Richard W. Brandsma, “The Legislature’s Response to *Serrano v. Priest*,” *Pacific Law Journal* 4 (1973), 28-46; and Richard F. Elmore and Milbrey W. McLaughlin, “Judicial Intervention in Policy-Making: *Serrano v. Priest*” in *Reform and Retrenchment: The Politics of California School Finance Reform* (Cambridge, Mass.: Ballinger, 1982), 13-73.

*v. Rodriguez*, but, unlike the state supreme court in California, the U.S. Supreme Court found that, despite local disparities in school aid and differences in tax effort throughout Texas, the state's system of school aid did not violate the equal protection clause of the Fourteenth Amendment. As Justice Powell wrote for the majority, Texas, "by its provision for state contributions to each district, assured a basic education for every child while permitting and encouraging vital local participation and control of schools through district taxation."<sup>59</sup>

Since a "basic education for every child" was all that the Texas state constitution guaranteed, the U.S. Supreme Court ruled, the state system of school aid did not violate the law. Powell added that the Texas system, "which was similar to systems employed in virtually every other state, was not a product of purposeful discrimination [or intentional state action] against any class but, instead, was a responsible attempt to arrive at practical and workable solutions to educational problems." He concluded, therefore, that Texas's formula for state aid to schools did not jeopardize the key principle of "equal educational opportunities"—defined as equal access to a "basic minimum" of instruction—for all students. The *Rodriguez* decision struck a blow to all cases seeking resource equalization through the federal courts. It effectively limited the impact of the *Serrano* decision to the state of California (and California state constitutional law) and relegated all future cases dealing with school aid to state courts.<sup>60</sup>

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<sup>59</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (21 March 1973).

<sup>60</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (21 March 1973). Initially filed in the summer of 1968 by a group of Mexican-American parents, this case did not argue that equal educational opportunity relied on racial desegregation or on bilingual or other special-compensatory programs; it linked equal opportunity solely to equal funding. Yet, the Achilles Heel of the *Rodriguez* case was the ambiguity of the "injured" class. In the court's words, "The case comes to us with no definitive description of the classifying facts or delineation of the disfavored class. Examination of the district court's opinion and of appellees' complaint, briefs, and contentions at oral argument suggests, however, at least three ways in which the discrimination claimed here might be described. The Texas system of school financing might be regarded as discriminating (1) against 'poor' persons whose incomes fall below some identifiable level of poverty or who might be characterized as functionally 'indigent,' or (2) against those who are relatively poorer than others, or (3) against all those who, irrespective of their personal incomes, happen to reside in relatively poorer school districts. Our task must be to ascertain whether, in fact, the Texas system has been shown to discriminate on any of these possible bases and, if so, whether the resulting classification may be regarded as suspect. . . . The precedents of this court provide the proper starting point. The individuals, or groups of individuals, who constituted the class discriminated against in our prior cases [that applied the principle of equal protection to the category of wealth] shared two distinguishing characteristics: because of their impecuniness they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit." According to Justice Powell, writing for the majority, "The argument here is not that the children in districts having relatively low assessable property values are receiving no public education; rather, it is that they are receiving a poorer quality education than that available to children in districts having more assessable wealth. Apart from the unsettled and disputed question whether the quality of education may be determined by the amount of money expended for it, a sufficient answer to appellees' argument is that, at least where wealth is involved, the equal protection clause does not require absolute equality or precisely equal advantages." In a statement that undermined the notion that equal expenditures would facilitate equal opportunities or outcomes, the court noted that, except for the very poorest and the very wealthiest districts, "the districts that spend next to the most money on education are populated by families having next to the lowest median family incomes while the districts spending the least have the highest median family incomes. It is evident that, even if the conceptual questions were answered favorably to appellees, no factual basis exists upon which to found a claim of comparative wealth discrimination." See also Douglas Reed, *On Equal Terms: The Constitutional Politics of Educational Opportunity* (Princeton: Princeton University Press, 2001).



But the impact of the decision did not end there. In a rather jarring move, Justice Powell held that, since education was not explicitly mentioned in the Constitution itself, federal courts could not judge issues of school spending: “Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of [e.g., the ‘right’ to free speech or the ‘right’ to vote], we have no indication that the present educational expenditure in Texas provides an education that falls short. Whatever merit [plaintiffs’] argument might have if a state’s financing system occasioned an absolute denial of educational opportunities to any of its children, that argument provides no basis for finding an interference with a ‘fundamental right’ where only relative differences in spending levels are involved and where—as is true in the present case—no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimum skills necessary for the enjoyment of the rights of speech and of full participation in the political process.”<sup>61</sup>

In other words, as long as a state education system cultivated “the basic minimum skills” required to participate in a democratic society, the federal courts were obligated to uphold their systems of school aid.<sup>62</sup> It would be difficult to overstate the importance of the court’s decision.<sup>63</sup> It effectively took the issue of school funding out of the realm of federal responsibility and removed the issue of educational quality—or resources—from the context of federally protected “rights.” At the same time, however, it left states with the burden of covering the high cost of educational services mandated under other federal laws (or required under other federal court decisions), including the costs of bilingual and the costs of court-ordered desegregation. In these areas, the federal government required educational services but took no responsibility for paying for them.

The principle of unfunded legal mandates applied especially to special education for the disabled, where rapidly increasing costs derived largely from federal court orders. Indeed, two important decisions in 1971 and 1972 led directly to skyrocketing costs for local schools that enrolled mentally, physically, or emotionally handicapped children. In the first case, *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania*, a federal court in Philadelphia ruled that public schools must place disabled pupils in the least restrictive classroom environment. Basing its ruling on the Fourteenth Amendment and the idea that

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<sup>61</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (21 March 1973).

<sup>62</sup> See *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (21 March 1973). On the question of education as a “fundamental right,” Justice Powell’s answer for the majority was curt. In his words, “the key to discovering whether education is ‘fundamental’ is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution. . . . Education, of course, is not among the rights afforded explicit protection under our federal Constitution. Nor do we find any basis for saying it is implicitly so protected.”

<sup>63</sup> *San Antonio v. Rodriguez* 411 U.S. 1 (1973). The measure of an adequate education was much debated in this case. According to the majority opinion, “Texas asserts that the minimum foundation program [for school aid] provides an ‘adequate’ education for all children in the state. By providing twelve years of free public-school education and by assuring teachers, books, transportation, and operating funds, the Texas legislature has endeavored to ‘guarantee, for the welfare of the state as a whole, that all people shall have at least an adequate program of education. This is what is meant by ‘a minimum foundation program of education.’ The state repeatedly asserted in its briefs in this court that it has fulfilled this desire and that it now assures ‘every child in every school district an adequate education’ No proof was offered at trial persuasively discrediting or refuting the state’s assertion.” Thirty state attorneys general submitted briefs in amicus curiae in support of this position.

separate educational facilities are inherently unequal, the court ordered the public schools in Philadelphia “to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity, within the context of a presumption that, among the alternative programs of education and training required by [state law] to be available, placement in a regular public school class is preferable to placement in a special public school class, and placement in a special public school class is preferable to placement in any other type of program of education and training.”<sup>64</sup>

The case of *PARC v. Pennsylvania* established two important precedents. First, it required schools to mainstream mentally retarded students into regular classes whenever possible. Second, it tied this requirement to the Fourteenth Amendment, suggesting that mainstreaming on both the school *and* the classroom level was legally essential to “equal educational opportunities.” *PARC v. Pennsylvania* did not, however, deliver the last word on equal educational opportunities for disabled students. In 1972, in the case of *Mills v. Board of Education*, a federal court in Washington, D.C., held that, while mainstreaming might be preferable for the disabled, isolation would continue to be permissible so long as it promised improved educational benefits—as measured by educational results. The most important question in *Mills v. Board of Education*, however, was not the question of mainstreaming but, rather, the question of how to *pay* for all the specialized services that disabled children required. Since Washington, D.C. was not a state, the city’s schools had to rely entirely on Congress for their financial welfare.

School officials in Washington, D.C., claimed they could not afford the programs that the plaintiffs in *Mills* required unless the “Congress of the United States appropriates millions of dollars to improve special education services in the District of Columbia.” The court, however, rejected this plea, asserting that “the District of Columbia's interest in educating the excluded children clearly must outweigh its interest in preserving its financial resources. If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and [his] ability to benefit therefrom. The inadequacies of the District of Columbia public school system, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the ‘exceptional’ or handicapped child than on the normal child.”<sup>65</sup>

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<sup>64</sup> *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972). See Leopold Lippman and I. Ignacy Goldberg, *Right to Education: Anatomy of the Pennsylvania Case and Its Implications for Exceptional Children* (New York: Teachers College Press, 1973); and Frederick J. Weintraub, Alan R. Abeson, David L. Braddock, “State Law and Education of Handicapped Children: Issues and Recommendations” (Reston, Va.: Council for Exceptional Children, 1972).

<sup>65</sup> *Mills v. Board of Education*, 348 F.Supp. 866 (D. D.C., 1972). It was not clear in *Mills* whether the “equitable” expenditure of resources would be measured according to flat dollar figures or the educational outcomes or results of specific groups of students. The court in *Mills* based its decision largely on *Hobson v. Hansen*, which argued that all children had an equal right to public resources expended for public schools: “In *Hobson v. Hansen*, judge Wright found that denying poor public-school children educational opportunities equal to that available to more affluent public school children was violative of the due process clause of the Fifth Amendment. A fortiori, the defendants’ conduct here, denying plaintiffs and their class not just an equal publicly supported education but all publicly supported education while providing such education to other children, is violative of the due process clause.”

In other words, the schools had to provide disabled students with “appropriate” services—either in integrated or in isolated classes, depending on recommendations of periodic placement hearings—and financial hardship was no excuse not to do so. In fact, read closely, the court’s decision in *Mills* implied that, when comparing resources for disabled and non-disabled children, merely “equal” resources would not suffice; in order to block allegations of discriminatory treatment, disabled children were actually entitled to *more* resources than non-disabled children. (Incidentally, a year after the *Mills* ruling, Congress responded to the needs of handicapped students *not* by providing more aid but, rather, by extending civil rights protections to these students: the Rehabilitation Act of 1973 declared that “no ‘otherwise qualified handicapped individual’ shall be excluded from participation in any program or activity receiving federal financial assistance” and defined a *handicapped individual* as a person who had a mental or physical impairment “which substantially limits one or more . . . major life activities.”)<sup>66</sup>

### **The Ford Years**

The issue of special education for the disabled had received steadily increasing attention in Congress ever since the Kennedy administration, and Johnson and Nixon also added to the number of programs designed to help the handicapped. In 1966, Congress authorized the Comprehensive Health

#### **Political Snapshot**

**President: Richard M. Nixon (R) 1973 – 1974 Second Term  
Gerald R. Ford (R) August 1974 – 1976**

Secretary of H.E.W.: Casper W. Weinberger  
Forrest David Matthews (1975)

Assistant Secretary for Education:  
Sidney P. Marland, Jr.  
Virginia Y. Trotter (1974)

Commissioner of Education: John Ottina  
Terrel H. Bell (1974)

#### **Major education actions:**

1973 – Rehabilitation Act [Note 4]  
1973 – Domestic Volunteer Service Act [Note 5]  
1974 – Education Amendments of 1974  
1974 – Native Americans Program Act [Note 6]  
1974 – Juvenile Justice and Delinquency Act [Note 6]  
1974 – Equal Education Opportunities Act  
1974 – Bilingual Education Act amended  
1975 – Indian Self-Determination and Education Assistance Act [Note 2]  
1975 – Education for All Handicapped Children Act [Note 2]  
1976 – Education Amendments of 1976  
1976 – Vocational Education Amendments [Note 7]  
1976 – Education Division and Related Agencies Appropriation Act  
1976 – Educational Broadcasting Facilities and Telecommunications Demonstration Act

#### **93rd Congress (1973-1974)**

**SENATE: 56-Dem, 42-Rep, 2-Other**

Vice-President: Spiro T. Agnew (R), to October, 1973.  
Gerald R. Ford (R), from December, 1973  
Nelson A. Rockefeller (R), from December, 1974.

Majority Leader: Mike Mansfield (D-MT)

Minority Leader: Hugh D. Scott, Jr. (R-PA)

Committee: Labor and Public Welfare

Chair: Harrison A. William, Jr. (D-NJ)  
Ranking Minority Member: Jacob K. Javits (R-NY)

**HOUSE: 242-Dem, 192-Rep, 1-Other**

Speaker: Carl B. Albert (D-OK)

Majority Leader: Thomas P. O'Neill, Jr. (D-MA)

Minority Leader: Gerald R. Ford (R-MI), to December, 1973  
John J. Rhodes (R-AZ)

Committee: Committee on Education and Labor

Chair: Carl D. Perkins (D-KY)  
Ranking Minority Member: Albert H. Quie (R-MN)

(continued...)

<sup>66</sup> *Mills v. Board of Education*. Not all special-education litigation in the early 1970s sought increased access to special services. In 1970, *Diana v. State Board of Education*, Civil No. 70-37 RFP (N.D. Calif. 1970) challenged the placement of Spanish-speaking Mexican American students in special classes for mentally retarded students because of their language “deficiencies.” (Ironically, Hispanic Americans tend to be *under*-represented in statistics on special education, perhaps because their marginal status in American schools causes them to be overlooked in diagnostic procedures.) The court agreed that students should not be segregated in special classes against their will. It is important to note, however, that Hispanic students “decertified” and taken out of special classes after the *Diana* decision—including those removed from special language classes that they claimed “stigmatized” them—“achieved significantly lower than a sample of low-achieving regular-class students in classrooms where decertified children were enrolled. The decertified children’s level of achievement was several years below grade level.” Thus, the court effectively ruled that students could opt out of special services, even if doing so resulted in below-average achievement; the Constitution did not require equal educational achievement, nor did it force students to take advantage of services that might promote equal achievement; the Constitution merely required that students have equal *access* to educational resources, whether or not they chose to avail themselves of those resources and whether or not they succeeded academically as a result of that choice.

Planning and Public Health Services Amendments (P.L. 89-749) to create a state-federal “Partnership for Health.” In 1967, Congress passed both Mental Health and Mental Retardation Amendments (P.L. 90-31 and P.L. 90-170) to serve mentally handicapped students. In 1968, Congress required schools to eliminate all architectural barriers to the physically handicapped and passed the so-called Handicapped Children’s Early Education Assistance Act (P.L. 90-538), which included assistance for early childhood education for handicapped three-year-olds. In 1969, Congress created a National Center on Education Media and Materials for the Handicapped, which, in turn, funded the “Sesame Street” television series—a highly successful children’s television program.

(...continued)

**Political Snapshot**

**President: Richard M. Nixon (R) 1973 – August 1974**  
**Gerald R. Ford (R) August 1974 - 1976**

**94th Congress (1975-1976)**

**SENATE: 60-Dem, 38-Rep, 2-Other**  
 Vice-President: Nelson A. Rockefeller, (R)  
 Majority Leader: Mike Mansfield (D-MT)  
 Minority Leader: Hugh D. Scott, Jr. (R-PA)  
 Committee: Labor and Public Welfare  
     Chair: Harrison A. William, Jr. (D-NJ)  
     Ranking Minority Member: Jacob K. Javits (R-NY)

**HOUSE: 291-Dem, 144-Rep.**  
 Speaker: Carl B. Albert (D-OK)  
 Majority Leader: Thomas P. O’Neill, Jr. (D-MA)  
 Minority Leader: John J. Rhodes (R-AZ)  
 Committee: Committee on Education and Labor  
     Chair: Carl D. Perkins (D-KY)  
     Ranking Minority Member: Albert H. Quie (R-MN)

In the 1970s, the pace of legislation for the disabled quickened. In 1971, Senator Hubert Humphrey (D-MN), whose granddaughter had Downs Syndrome, introduced a bill to increase categorical aid to the handicapped. Using the civil rights language that had animated such cases as *PARC v. Pennsylvania* and *Mills v. Board of Education*, he argued that “Every child—gifted, normal, and handicapped—has a fundamental right to educational opportunity.” A year later, Senator Harrison Williams (D-NJ), who sat on the Senate Labor and Welfare Committee with Massachusetts Senator Edward Kennedy, presented a similar bill, which he called the Education for All Handicapped Children Act. Together, Williams and Kennedy sponsored hearings on this bill in Massachusetts, New Jersey, and Pennsylvania. (Their choice of locations was states because, at the time, these states had generated the most prominent special education lawsuits, and, in the wake of these suits, states such as Massachusetts and Pennsylvania had written the nation’s most progressive special education laws.)<sup>67</sup>

In 1974, the reauthorization of the ESEA boosted federal aid to special education from \$100 million (in 1974) to \$660 million (in 1975). These grants, like all grants to the disabled, flowed to school districts regardless of their wealth. By far the largest federal program for the education of the handicapped came in 1975, however, with the passage of the landmark Education for All Handicapped Children Act, known by its legislative number, P.L. 94-142. This law had the support of major interest groups, including the Council for Exceptional Children (CEC), the National Education Association (NEA), the National School Boards Association (NSBA), the Committee for the Full Funding of Education (CFFE), the Council of Chief State School Officers (CCSSO), the Council of Great City Schools (CGCS), National Association for Retarded Children (NARC), and others. It also had the support of commissioner of education, Sidney Marland, who had replaced interim commissioner Terrell Bell, who, in turn, had replaced James Allen.

<sup>67</sup> See Reed Martin, *Educating Handicapped Children: The Legal Mandate* (Champaign, Ill.: Research Press Company), 15, 17.

The legislative history of P.L. 94-142 provides a glimpse into the various issues that later came to complicate the subject of special education. Arguments in favor of the legislation were made primarily on civil rights ground (i.e., “equal access to high-quality education”), though a few members of Congress claimed potential economic benefits to be gained from educating handicapped citizens. The Council of Chief State School Officers and the National School Boards Association (an organization that later turned against special education because of its high costs) both supported P.L. 94-142, and advocates agreed unanimously on the desirability of “mainstreaming” handicapped and non-handicapped students into the same classrooms whenever possible. *Not a single witness testified in congressional hearings against the bill*, which passed by wide margins. In June, 1975, the Senate passed its version of the bill by a vote of 83 to 10, and, a few weeks later, the House passed its version by a vote of 375 to 44.

The key difference between the House and Senate versions had to do with the number of students in each local school district who could be classified as *handicapped*. The Senate put a 10-percent cap on the number of pupils (aged three to twenty-one) who could be classified as disabled, while the House put a more lenient 12-percent cap on the number of pupils (aged five to seventeen) who could be so classified. The Senate put no limit on the proportion of students who could be placed in any given category, but, in an effort to keep costs down, the House version put a limit of 2 percent on the proportion of students who could be classified as learning disabled. Neither the Senate nor the House specified any diagnostic criteria for the disabilities to be covered in the bill (leaving these criteria up to individual states), but both incorporated due-process guarantees from recent court decisions to ensure “appropriate” placements in the “least restrictive environment.” Both the Senate and the House paid lip service to the idea of mainstreaming, but neither indicated that classroom integration should take precedence over special classes if special classes promised better educational results.

On November 29, 1975, President Ford signed the Education for All Handicapped Children Act (P.L. 94-142) into law. The new law dramatically increased the federal commitment to categorical aid to special education. With a price tag of \$3 billion to \$4 billion over five years, it authorized funds to cover “excess” expenses associated with special education on an increasing basis, from 5-percent reimbursements in the first year to 10 percent reimbursements in the second year, 20 percent reimbursements in the third, 30 percent reimbursements in the fourth, and 40 percent reimbursements in the fifth and all subsequent years. In Ford’s view, however, the law promised more than the federal government could deliver: “Even the strongest supporters of this measure know as well as I that they are falsely raising the expectations of the groups affected [i.e., handicapped children and their parents] by claiming authorization levels which are excessive and unrealistic.”<sup>68</sup>

In the end, Ford worried, P.L. 94-142 would simply become another “unfunded mandate” with legal obligations that outstripped its financial contributions. “It establishes complex requirements under which tax dollars would be used to support administrative paperwork and not educational programs,” Ford said. “Unfortunately, these requirements will remain in effect even though the Congress appropriates far less than the amounts contemplated in [the law].” By the time P.L. 94-142 took effect in 1977, Ford warned, Congress would have to trim both its financial promises

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<sup>68</sup> Quoted in Bruce O. Boston, “Education Policy and the Education for All Handicapped Children Act (P.L. 94-142): A Report of Regional Conferences” (January-April 1977), 11.

and its regulatory requirements. Otherwise, he said, “its good intentions could be thwarted by the many unwise provisions it contains.”<sup>69</sup> Indeed, the provisions of P.L. 94-142 struck a delicate balance between being voluntary (any state could choose not to receive federal funds) and mandatory (all states had to obey federal civil rights laws as interpreted by the courts). The key question for the future was whether taxpayers would be willing to *pay* for the programs necessary to meet civil rights expectations.

By the time P.L. 94-142 took effect in the fall of 1977, special education referrals had increased at an astounding rate. Before passage of the law, less than five percent of the nation’s students were diagnosed with disabilities; after federal aid became available, that number doubled to nine percent. In Chicago, the figure climbed to 11.7 percent; in Philadelphia, 12.4 percent; in Baltimore, 14.9 percent; in Boston, 18.4 percent—more than twice the national average and more than six times the average three years earlier.<sup>70</sup> Some contended that, with improved diagnostic techniques and due-process protection, Boston’s figures represented an accurate picture of disability in the city. Others, however, noted how arbitrary and fickle diagnoses could be.<sup>71</sup> Inasmuch as P.L. 94-142 entailed a “zero-rejection” clause, all handicapped students, regardless of their degree of disability, were entitled to placement in special education programs unless they explicitly opted out. The idea behind this zero-rejection clause was that no disabled student should be denied services to which he or she was legally entitled. Yet, such a clause was useful only if diagnostic processes were reliable: if schools assigned to special education students who were *not* disabled, then the idea of “serving all disabled students” would lose credibility. Instead of upholding civil rights by making “appropriate” placements, the schools would be suspected of undermining civil rights by making “discriminatory” placements.

Everything hinged on reliable diagnoses. Yet, as many educators acknowledged, reliability was rare in the diagnosis of disability. In 1977, the Stanford Research Institute (SRI) examined 400 analyses of the “prevalence” of different categories of disability in the general population and found that “no single set of prevalence figures can be accepted as fact.”<sup>72</sup> Scholars attributed the unreliability of diagnoses to disparities in the way states defined categories of disability, differences in the way professionals screened groups of children, discrepancies in the ways states located potentially handicapped children, and, perhaps most important of all, dissimilarities in state financial reimbursement plans. The same student could be diagnosed as disabled in one state but not in another. For example, the category of “learning disabled” accounted for 19 percent of disabled students in New York but 63 percent in Hawaii. It was unlikely that students in Hawaii were three times as likely to be learning disabled as in New York; instead, it turned out that New York simply diagnosed more students as “mentally retarded” or “emotionally disturbed.”

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<sup>69</sup> Quoted in Boston, 11.

<sup>70</sup> See Joseph P. Viteritti, *Across the River: Politics and Education in the City* (New York, Holmes and Meier, 1983), 183.

<sup>71</sup> See, for example, Richard A. Weatherly and Michael Lipsky, “Street-Level Bureaucrats and Institutional Innovation: Implementing Special Education Reform,” *Harvard Educational Review* 47:2 (May 1977), 106-107.

<sup>72</sup> See Stearns, M., Norwood, C., Kaskowitz, D., and Mitchell, S., *Validation of State Counts of Handicapped Children*, 2 vols. (Menlo Park, Calif.: Stanford Research Institute International, 1977).

New York placed approximately 18 percent of disabled pupils in each of these categories and did so because these categories involved more intensive treatments that garnered more state and federal aid. Making this situation even more complicated was the fact that certain categories of disability were not covered by federal aid. For example, the law covered students diagnosed as “emotionally disturbed” but not those diagnosed as “socially maladjusted,” though the two categories have very similar effects on classroom learning.<sup>73</sup> According to the federal government, “emotional disturbance” was a disability but “social maladjustment” was not. It could therefore seem prudent to identify a student as “emotionally disturbed” rather than “socially maladjusted” in order to receive federal grants. (Indeed, in the early 1970s, one district in Pennsylvania classified 36 percent of its students as handicapped in some way and eligible for aid.)<sup>74</sup> At the same time, however, such a strategy could entail costs: students diagnosed as disabled in order to garner aid could not be suspended or expelled for behaviors attributable to their disability, because such disciplinary action could be construed as “discriminatory.”<sup>75</sup>

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<sup>73</sup>See Clarizio, Harvey F., “Differentiating Emotionally Impaired from Socially Maladjusted Students,” *Psychology in the Schools* 24:3 (July 1987): 237-243. Inasmuch as federal funding authorizations for special education were based on a limit of 12 percent of the total school population rather than a guarantee to all students diagnosed with disabilities, schools became strategic about diagnosing disabilities. Often, schools diagnosed disabilities (or failed to diagnose them) for economic rather than educational reasons.

<sup>74</sup> See Thomas B. Parrish and Jay G. Chambers, “Financing Special Education,” *Future of Children* 6:1 (Spring 1996): 121-139.

<sup>75</sup> See Larry Bartlett, “Disciplining Handicapped Students: Legal Issues in Light of *Honig v. Doe*,” *Exceptional Children* 55:4 (1989): 357-366.

## The Carter Years

P.L. 94-142 took effect in 1977, the year that President Jimmy Carter took office, and the new law quickly became part of a plan to reorganize the administrative aspects of the federal role in education. As part of his campaign, Carter had pledged to create a new cabinet-level department to oversee the rapidly growing panoply of federal aid programs. A broad coalition of organizations supported this effort, including the Council of Chief State School Officers (CCSSO), the National Association of State Boards of Education (NASBE), the National School Boards Association (NSBA), the Council of Great City Schools (CGCS), the American Association of School Administrators (AASA), and the National Education Association (NEA), whose endorsement Carter had worked very hard to secure during his campaign. One of the few major organizations to oppose the effort to create a new federal Department of Education was the NEA's chief rival, the American Federation of Teachers (AFT).<sup>76</sup>

In 1979, Congress passed the Department of Education Organization Act by a narrow margin in both houses. It was unclear how a new department would affect the federal role in education, but it was obvious that the new department would confront an extraordinarily complex set of administrative issues. In the 1970s, the struggle to create a new department coincided with major controversies over special education, court-ordered busing, school finance reform, the effectiveness of federally funded programs, and, in a related vein, the issue of school

“accountability” broadly construed. The challenge in the Carter years—years of continuing economic stagflation and cultural “malaise”—was to decide not only how to provide equal opportunities to diverse groups of students but also how to *pay* for all the new programs that federal courts had demanded and how to show that these programs “worked.” By the late 1970s, the members of Congress felt growing pressure to show that financial inputs generated positive

### Political Snapshot

#### President: James Earl Carter (D) 1977 - 1980

Secretary of H.E.W.: Joseph A. Califano, Jr.  
Patricia Roberts Harris (1979)  
Assistant Secretary for Education: Mary Berry  
Commissioner of Education: Ernest L. Boyer  
Secretary of Education: Shirley Mount Hufstedler (1980)

#### Major education actions:

1977 – Education Amendments of 1977  
1977 – Public Law 95-134 (Consolidated Grants to Insular Areas) [Note 2]  
1978 – Education Amendments of 1978 [Note 2]  
1979 – Department of Education Organization Act  
1980 – Creation of Department of Education [Note 1]  
1980 – Refugee Education Assistance Act [Note 2]  
1980 – Education Amendments of 1980 [Note 3]

#### 95th Congress (1977-1978)

##### SENATE: 61-Dem, 38-Rep, 1-Other

Vice-President: Walter F. Mondale (D)  
Majority Leader: Robert C. Byrd (D-WV)  
Minority Leader: Howard H. Baker, Jr. (R-TN)  
Committee: Human Resources  
Chair: Harrison A. William, Jr. (D-NJ)  
Ranking Minority Member: Jacob K. Javits (R-NY)

##### HOUSE: 292-Dem, 143-Rep.

Speaker: Thomas P. O'Neill, Jr. (D-MA)  
Majority Leader: James C. Wright, Jr. (D-TX)  
Minority Leader: John J. Rhodes (R-AZ)  
Committee: Committee on Education and Labor  
Chair: Carl D. Perkins (D-KY)  
Ranking Minority Member: Albert H. Quie (R-MN)

#### 96th Congress (1979-1980)

##### SENATE: 58-Dem, 41-Rep, 1-Other

Vice-President: Walter F. Mondale (D)  
Majority Leader: Robert C. Byrd (D-WV)  
Minority Leader: Howard H. Baker, Jr. (R-TN)  
Committee: Labor and Human Resources  
Chair: Harrison A. Williams, Jr. (D-NJ)  
Ranking Minority Member: Richard S. Schweiker (R-PA)

##### HOUSE: 277-Dem, 158-Rep.

Speaker: Thomas P. O'Neill, Jr. (D-MA)  
Majority Leader: James C. Wright, Jr. (D-TX)  
Minority Leader: John J. Rhodes (R-AZ)  
Committee: Committee on Education and Labor  
Chair: Carl D. Perkins (D-KY)  
Ranking Minority Member: John M. Ashbrook (R-OH)

<sup>76</sup>See Beryl A. Radin and Willis D. Hawley, *The Politics of Federal Reorganization: Creating the U.S. Department of Education* (New York: Pergamon Press, 1988).



educational outputs in the public schools. In short, during the Carter administration, both program evaluation and student assessment moved to the very top of the federal education agenda.<sup>77</sup>

Shortly before it created the new federal Department of Education, Congress had authorized funding for a new Office of Educational Research and Improvement (OERI). The purpose of the OERI was to sponsor scholarly research on effective strategies for teaching and learning among diverse populations of students. Growing concern about low academic achievement levels in the late 1970s led to an increasing emphasis throughout the nation on standardized test results as the best way to measure both student progress and program effectiveness. At a time of economic strain, taxpayers sought “efficiency” in the use of every public dollar; they wanted concrete and visible “proof” that every penny invested in schools would yield a penny’s worth of performance (the exact measurement of which was, of course, vague). The OERI aimed to measure the inputs and outputs of public schools throughout the country. Through its Educational Resources Information Center (known as ERIC), the OERI was charged with supporting and disseminating new discoveries in pedagogy, curriculum, administration, and all other aspects of schooling.

Much of the attention fixed on student achievement in the late 1970s derived from media hype over the so-called SAT Test Score Decline. In 1977, a panel of experts from the College Board announced a steady drop in SAT scores in the previous fourteen years. Between 1963 and 1977, average mathematics scores had fallen 32 points; average verbal scores had fallen 49 points (that is, half a standard deviation). The College Board panel attributed these declines to its perception that more minority (and female) students were taking the SAT, but others reached different conclusions. Some observed that, following the rapid growth of special-compensatory services in the 1960s, the average dropout rate in the nation’s high schools had begun to decline, and more low-achieving students had remained in school. Over time, greater attention to compensatory, bilingual, and special education—while ostensibly geared toward basic skills for at-risk students—had pulled attention (and resources) away from high-achieving, college-bound students . . . with the result that fewer students now posted high scores on the SAT.<sup>78</sup>

This analysis led many in state departments of education to assert that more work was needed in the area of “basic skills competency”—that is, demonstrable proficiency in the areas of reading and mathematics. Beginning in 1978, a number of states began to roll out comprehensive programs on basic skills improvement. These policies (spurred in part by promises of federal

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<sup>77</sup> In 1976, President Ford had tried to re-introduce the idea of block grants for education. He suggested consolidating 24 elementary and secondary categorical grant programs into a single block grant, the only requirement being that states spend 75 percent of their funds on the educationally disadvantaged and the handicapped. Answering the objection that the Council of Chief State School Officers had made to Quie’s bill in 1967, Ford promised that no state would receive less under the new block grants than it had under the old categorical system. However, like Nixon’s proposal, Ford’s plan (along with three other block grants for health, child nutrition, and social services) failed. The House Subcommittee on Elementary, Secondary, and Vocational Education held a hearing on Ford’s proposal, but no further action was taken. Most Washington-based education lobbies opposed it, sensing that it represented a reduced financial commitment to education. They doubted that block grants would reduce red tape, and they feared that smaller categorical programs would fail to compete with larger programs for funds.

<sup>78</sup> Janice J. Weinman, *Declining Test Scores: A State Study* (Boston: Massachusetts Department of Education, 1978), xix, 47. See also College Board, *On Further Examination: Report of the Advisory Panel on the Scholastic Aptitude Test Score Decline* (New York: College Board, 1977).

grants for such programs) asked states to “mandate assessment of basic skills achievement at the earliest grade levels feasible and at each appropriate grade level thereafter. . . .”<sup>79</sup> By testing students’ basic skills, states hoped to be able to assess the overall effectiveness of schools and hold both teachers and administrators publicly accountable for measurable results. (Such plans were not, however, totally new. As early as 1973-1974, Massachusetts had begun to collect data on statewide achievement levels. The state sought “specific measures for evaluating the progress of each student and the success of each educational program,” asserting that “These accountability gauges shall be systematic and public and shall make use of standardized measures of progress such as the National Assessment of Educational Progress [NAEP].” Moreover, New York had statewide “Regents” exams as early as the 1870s.)<sup>80</sup>

The emphasis on basic-skills competency testing attracted a great deal of attention by the late 1970s—but it also attracted criticism. As one policy analyst in Massachusetts observed, “If all that public education tried to do was, for example, assure age-in-grade attainment levels in basic skills, then it is relatively easy to measure effectiveness and not much more difficult to obtain statistically meaningful bases for [comparing] effectiveness between school systems and over time. [Yet,] If public education has a broader mission, and if that mission may vary substantially from situation to situation, then . . . the effort to develop and apply universal measures of effectiveness may cause an unwanted shift of [educational] goals toward achieving ‘good marks’ on those measures, even if they are regarded as inappropriate. Simplistic applications of systems analysis could set education back to the days when what schools did was prepare children to take certain tests.”<sup>81</sup> In other words, state-mandated basic skills competency testing could drive schools to “teach to the test” without necessarily offering a well-rounded, holistic, general, or “authentic” education to their students.

Ironically, the basic skills competency testing movement coincided with the end of the federally funded Right to Read program. After nearly a decade in operation (the program was the brainchild of federal commissioner of education James Allen in 1969-1970), the program had sought to improve reading proficiency among low-performing students, but it had produced disappointing results. Indeed, achievement had actually *declined* as students in the program passed from lower into upper grades. As the state Right to Read director in Massachusetts noted, “The cause of this decline remains to be known, since the statewide assessment measured *only the results, not causes*. Meanwhile, it is open season for finger-pointers to guess at why gains appear to be dissipated as the students proceed through the junior and senior high school.” Conceding that schools were “not using the results of the statewide assessments as a springboard

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<sup>79</sup> “Report of the Massachusetts Advisory Committee on High School Graduate Requirements” (June 1978), 1-2, quoted in Massachusetts State Board of Education, “Policy on Basic Skills” (29 August 1978). “The committee is well aware of the pressures on the state board of education from various publics to address vigorously the alleged lack of minimal competency in basic skills on the part of a number of high school graduates. This public concern is evidenced by several bills before the [state legislature] which would mandate some form of statewide competency testing. The advisory committee is also aware that this is a national concern. The state boards of education in over thirty states have already adopted policies to meet this real or apparent need.”

<sup>80</sup> Joseph M. Cronin, “Plan for Reorganization” (Boston: Executive Office of Educational Affairs, January, 1973).

<sup>81</sup> Paul W. Cook, Jr., *Modernizing School Governance for Educational Equality and Diversity* (Boston: Massachusetts Advisory Council on Education, September 1972), 74

for revising teachers' practices in reading," Massachusetts's director admitted that it was not clear whether the Right to Read effort was ever supposed to change teacher practices.<sup>82</sup>

In the late 1970s, school officials had plenty of reasons to believe that basic skills competency testing was no more likely to raise achievement than the Right to Read effort had been.<sup>83</sup> In 1977, the American Institutes for Research (AIR) reported in a three-year, \$1.8 million study for the federal Office of Education that innovative programs in schools had had no discernible effect on academic achievement over time. For example, the AIR found "no clear evidence" that levels of innovation ensured gains in reading, and it found that levels of innovation (and degrees of "individualization" in instruction) were, in fact, "negatively rather than positively related to growth in arithmetic achievement." The AIR researchers noted that their study's findings "should serve as a reminder to educators—as well as to parents and legislators—that educational innovation per se will not necessarily produce dramatic effects on student achievement." Changing teacher practices (let alone changing students' readiness for school or their environment outside of school) seemed beyond the reach of even the most carefully implemented school reform initiatives.<sup>84</sup>

Nonetheless, statewide basic skills competency tests continued to gain momentum nationwide. As policy analyst and assessment expert Lorrie Shepard of the University of Colorado has noted, "By 1978, thirty-three states had taken action to mandate minimum competency standards for grade-to-grade promotion or high school graduation. By 1980, all fifty states had a minimum competency testing program or a state testing program of some kind. By mandating state-administered tests and standards, legislators intended to improve the quality of schooling and 'put meaning back into the high school diploma.'" Yet, in many cases, the basic skills competency testing movement was considered an end in itself; testing *was* the reform, and other school- or social-reform strategies went largely undeveloped. As one state official put it, "Evaluation of student achievement of minimum standards is obviously necessary in order to know how students are doing and whether or not they have achieved minimum standards"; the implication was that a test to see how students were doing was a first step toward a program that might help students learn.<sup>85</sup>

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<sup>82</sup> Joseph Tremont, "The Massachusetts Right to Read Effort: A Plan for the Seventh and Final Year" (March, 1979), 1, 2, 21-23 (emphasis added).

<sup>83</sup> See Lorrie A. Shepard, "The Contest Between Large-Scale Accountability Testing and Assessment in the Service of Learning, 1970-2001" (Unpublished paper, 2002). See also the special issue of *Phi Delta Kappan* 59 (1978); Michael R. Sminth, "Legal Considerations of Competency Testing Programs," *School Law Bulletin*, 9:4 (October, 1978); Walter Haney and George Madaus, "Making Sense of the Competency Testing Movement," *Harvard Educational Review* 48:4 (November, 1978); David G. Carter, "Competency Testing: An Emerging Legal Issue," *Education and Urban Society* (August 1979); and Joan C. Baratz, "Policy Implications of Minimum Competency Testing" in Richard M. Jaeger and Carol K. Tittle, eds., *Minimum Competency Achievement Testing: Motives, Models, Measures, Consequences* (Berkeley, Calif.: McCutchan Publishing Corp. 1980).

<sup>84</sup> Quoted in "Any Technique—or None—Will Work for the Geniuses," *Washington Post* (1977). See also Thomas C. Thomas and Sol H. Pelavin, *Patterns of ESEA Title I Reading Achievement* (Menlo Park, Calif.: Stanford Research Institute, 1976).

<sup>85</sup> Massachusetts Department of Education, "Basic Skills Improvement Policy Implementation Guide #1" (April 1979), unpaginated typescript.

Backing the “accountability” movement were many prominent business leaders. Indeed, one of the most subtle but significant shifts in education reform in the late 1970s was a shift *away* from local community activists *toward* business leaders as the driving force behind school change. This shift toward business executives was supported in part by new federal grants that actively promoted business-school partnerships. The Carter administration lobbied hard for a new Youth Employment Demonstration Project Act—part of the Comprehensive Employment Training Act (CETA) of 1977—which, between 1978 to 1980, directed millions of dollars *toward* local businesses that agreed to provide summer jobs to at-risk high school students. The assumption behind these school-to-work programs was that, if disadvantaged students could see what the business world required of them, they would start to understand the purposes of schooling and would work harder to improve their academic achievement (i.e., their test scores). In this way, public schools would become responsive or “accountable” to the demands of the labor market.

The growing school “accountability” movement of the 1970s was not limited to testing, however. It also included increasing restraints on local school budgets. Business officials—spurred by taxpayers’ associations and watchdog groups—kept a close eye on education spending. Convinced that schools were “wasting” resources and could be more efficient as well as more effective in their use of public funds, voters put more and more stringent controls on school budgets. The so-called “taxpayer revolts” of this era began in California in 1978 with the passage of Proposition 13 and continued in Massachusetts in 1980 with the passage of Proposition 2½. Proposition 2½, for example, led to huge cuts in school budgets. If any town’s property tax rate was higher than 2.5 percent (as most were in Massachusetts), then Proposition 2½ mandated spending cuts of 15 percent per year to bring local budgets in line with revenues generated by a (maximum) 2.5 percent property tax rate. At the same time, Proposition 2½ restricted all local tax increases to no more than 2.5 percent per year, *regardless* of growth in population or property values.

These laws, and others like them, put a strain on local school budgets and forced administrators—who faced rising expectations for high academic achievement—to try to produce better educational outcomes with fewer educational resources; that is, do more with less. Perhaps the most important lesson to be learned from the rising accountability movement of the 1970s was that it began at the state level and only gradually percolated up to the federal level. As officials in Massachusetts observed as early as 1973 in a “Plan for Advancing Quality and Excellence by the Organization and Management of Public Education,” the public demanded accountability. “There is increasing concern on the part of the public about higher educational expenditures and how these increased costs relate to improved programs and services,” the report commented, so it was time for “a results-oriented school management system characterized by needs assessment, goal definition, careful consideration and selection of action or program alternatives (so-called program budgeting), long-range planning, . . . and careful evaluation techniques.”<sup>86</sup> Similar calls for educational “accountability” rippled through virtually every state—and, eventually, up to the federal government.

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<sup>86</sup> Governor’s Commission to Establish a Comprehensive Plan for School District Reorganization and Collaboration, “A Plan for Advancing Quality and Excellence by the Organization and Management of Public Education” (Boston: Massachusetts Advisory Council on Education, 1974), 70, 101, 92, 85, 6, 93.

## The Reagan Years

The fact that state leaders seized the initiative for accountability reforms pleased officials in the new Reagan administration, which began in 1981 to shift a broad array of responsibilities back to the states. Promising to devolve financial and regulatory powers to state and local agencies whenever possible, Reagan persuaded the Congress to cut not only the amount of federal aid to education but also the extent of federal regulation in schools. Major cuts accompanied the Educational Consolidation and Improvement Act (ECIA)—part of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). Taking effect in June, 1982, the ECIA represented the latest reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA)—but it substantially altered the original law. It changed the name of Title I to “Chapter 1” and then collapsed twenty-nine smaller categorical programs into block grants to the states, which it called “Chapter 2.” All told, the ECIA cut federal aid to schools by more than \$1 billion, or 15 percent, in its first year (1982-1983) and specified even larger cuts for the future.

In June of 1981, Vice President George Bush and Secretary of Education Terrel Bell (who served as interim federal commissioner under Nixon and had since returned to his home state of Utah to serve as state commissioner of education) held a meeting with all fifty chief state school officers to discuss Reagan’s domestic policy goals, which were, in a nutshell, to reduce the federal budget deficit, to attack inflation, to cut taxes, and to decentralize as well as deregulate a wide range of federal social welfare programs. These were the building blocks of the so-called New Federalism agenda, which traced its roots back to the Nixon administration.<sup>87</sup> Reagan’s top priority in education was to scale back federal categorical aid programs—not only to save money and reduce the deficit, but also to give “control” back to states and localities. At the same time, however, the president wanted to show that he was still “concerned” about education and would use his office to build

<sup>87</sup> See Terrel H. Bell, “Education Policy Development in the Reagan Administration,” *Phi Delta Kappan* (March 1986), 487-493. See also Terrel H. Bell, *The Thirteenth Man: A Reagan Cabinet Memoir* (New York: Free Press, 1988).

### Political Snapshot

**President: Ronald Reagan (R) 1981 – 1984 First Term**  
Secretary of Education: Terrel H. Bell

#### Major education actions:

1981 – Head Start Act [Note 6]  
1981 – Community Services Block Grant Act [Note 6]  
1981 – Education Consolidation and Improvement Act  
1982 – Student Financial Assistance Technical Amendments Act [Note 3]  
1984 – Helen Keller National Center Act [Note 4]  
1984 – Education for Economic Security Act [Note 2]  
1984 – Education Amendments of 1984  
1984 – Bilingual Education Act amended

#### 97th Congress (1981-1982)

**SENATE: 53-Rep, 46-Dem, 1-Other**  
Vice-President: George H. W. Bush (R)  
Majority Leader: Howard H. Baker, Jr. (R-TN)  
Minority Leader: Robert C. Byrd (D-WV)  
Committee: Labor and Human Resources  
Chair: Orrin Hatch (R-UT)  
Ranking Minority Member: Edward M. Kennedy (D-MA)

#### HOUSE: 242-Dem, 192-Rep, 1-Other

Speaker: Thomas P. O'Neill, Jr. (D-MA)  
Majority Leader: James C. Wright, Jr. (D-TX)  
Minority Leader: Robert H. Michel (R-IL)  
Committee: Committee on Education and Labor  
Chair: Carl D. Perkins (D-KY)  
Ranking Minority: John M. Ashbrook, 1981-82 (R-OH)  
Ranking Minority: John N. Erlenborn, 1982-83 (R-IL)

#### 98th Congress (1983-1984)

**SENATE: 54-Rep, 46-Dem.**  
Vice-President: George H. W. Bush (R)  
Majority Leader: Howard H. Baker, Jr. (R-TN)  
Minority Leader: Robert C. Byrd (D-WV)  
Committee: Labor and Human Resources  
Chair: Orrin Hatch (R-UT)  
Ranking Minority Member: Edward M. Kennedy (D-MA)

#### HOUSE: 269-Dem, 166-Rep.

Speaker: Thomas P. O'Neill, Jr. (D-MA)  
Majority Leader: James C. Wright, Jr. (D-TX)  
Minority Leader: Robert H. Michel (R-IL)  
Committee: Committee on Education and Labor  
Chair: Carl D. Perkins (D-KY)  
Ranking Minority Member: John N. Erlenborn (R-IL)

support for public schools. As one scholar put it, “Understanding the distinction between education as a national *concern* but a state and local *responsibility* is important in understanding the president’s contention that education is high on the national agenda but low in his budgetary priorities.”<sup>88</sup>

After decades of steadily expanding federal aid to schools, the ECIA marked a sudden federal retreat—and its effect was dramatic. Unlike the original ESEA, which federal officials had used, in part, to promote civil rights and desegregation, the ECIA pulled back from these priorities and insisted that local officials were best suited to solve “local” problems. The centerpiece of the ECIA—the piece that most directly fostered the devolution of power away from the federal government—was Chapter 2, with its block grant to each state. Under Chapter 2, the federal Department of Education allotted a lump sum to each state, which then parceled this sum out to local schools. The amount of each state’s block grant was set according to a pupil-weighting formula that allowed states with more pupils in high-cost or heavily weighted programs—programs for low-income or non-English-speaking or disabled pupils—to receive larger Chapter 2 grants. Once a state received its Chapter 2 grant, however, it was under no obligation to use this grant to serve high-cost students; instead, it could use its Chapter 2 grant in any way it wished.<sup>89</sup>

On the one hand, this flexibility allowed states to meet the educational needs they considered most pressing. On the other hand, it allowed funds to bypass students from politically weaker groups. One consequence of this system was that urban schools with large enrollments of high-cost students helped their states obtain large Chapter 2 grants but did not themselves receive large grants. Indeed,

**Political Snapshot**

**President: Ronald Reagan (R) 1985 – 1988 Second Term**

Secretary of Education: William J. Bennett  
Lauro F. Cavazos, 1988

**Major education actions:**

- 1985 – Child Development Associate Scholarship Assistance Act [Note 6]
- 1986 – Education of the Deaf Act [Note 5]
- 1986 – Sections 51 & 52 of Internal Revenue Code (Work Opportunity Credit) [Note 4]
- 1986 – Anti-Drug Abuse Act (Title IV, Subtitle C, Indian Education Programs) [Note 2]
- 1986 – Handicapped Children’s Protection Act [Note 2]
- 1986 – Higher Education Amendments of 1986 [Note 3]
- 1987 – McKinney-Vento Homeless Assistance Act [Note 2]
- 1988 – Section 5051 of the Anti-Drug Abuse Act (National Commission on Drug-Free Schools) [Note 5]
- 1988 – Section 414(c) of the American Competitiveness and Workforce Act [Note 4]
- 1988 – Tribally Controlled Schools Act [Note 2]
- 1988 – Education and Training for a Competitive America Act
- 1988 – Educational Partnerships Act
- 1988 – Bilingual Education Act amended

**99th Congress (1985-1986)**

**SENATE: 53-Rep, 47-Dem.**

- Vice-President: George H. W. Bush (R)
- Majority Leader: Robert Dole (R-KS)
- Minority Leader: Robert C. Byrd (D-WV)
- Committee: Labor and Human Resources  
Chair: Orrin Hatch (R-UT)  
Ranking Minority Member: Edward M. Kennedy (D-MA)

**HOUSE: 253-Dem, 182-Rep.**

- Speaker: Thomas P. O’Neill, Jr. (D-MA)
- Majority Leader: James C. Wright, Jr. (D-TX)
- Minority Leader: Robert H. Michel (R-IL)
- Committee: Committee on Education and Labor  
Chair: Augustus F. Hawkins (D-CA)  
Ranking Minority Member: James M. Jeffords (R-VT)

**100th Congress (1987-1988)**

**SENATE: 55-Dem, 45-Rep.**

- Vice-President: George H. W. Bush (R)
- Majority Leader: Robert C. Byrd (D-WV)
- Minority Leader: Robert Dole (R-KS)
- Committee: Labor and Human Resources  
Chair: Edward M. Kennedy (D-MA)  
Ranking Minority Member: Orrin Hatch (R-UT)

**HOUSE: 258-Dem, 177-Rep.**

- Speaker: James C. Wright, Jr. (D-TX)
- Majority Leader: Thomas S. Foley (D-WA)
- Minority Leader: Robert H. Michel (R-IL)
- Committee: Committee on Education and Labor  
Chair: Augustus F. Hawkins (D-CA)  
Ranking Minority Member: James M. Jeffords (R-VT)

<sup>88</sup> David L. Clark, Terry A. Astuto, and Paula M. Rooney, “The Changing Structure of Federal Education Policy in the 1980s,” *Phi Delta Kappan* (November 1983): 188-193. See also Daniel Patrick Moynihan, *Miles to Go: A Personal History of Social Policy* (Cambridge, Mass.: Harvard University Press, 1996).

<sup>89</sup> For an excellent treatment of an earlier (failed) block grant proposal, see Stephen S. Kaagan, “Executive Initiative Yields to Congressional Dictate: A Study of Educational Renewal, 1971-1972” (Unpublished Ed.D. dissertation, Harvard Graduate School of Education, 1973).

most urban school districts received comparatively small grants under Chapter 2, which “consolidated” (i.e., eliminated) many of the categorical programs that previously distributed aid to high-cost students in the inner city.<sup>90</sup> Whereas the original ESEA had targeted aid at educationally disadvantaged students, Chapter 2 allowed states to decide for themselves how best to use federal aid, and it was clear that most state education agencies felt intense political pressure to direct more aid to suburban areas (where voting rates and tax paying were higher) and less aid to urban schools.

It is important to note that block grants did not succeed politically at a time of federal budget surpluses (the circumstance that had given rise to the original block-grant idea in the 1960s); rather block grants succeeded politically at a time of growing budget *deficits*. The reason for their success was that the perceived purpose of block grants had switched from fiscal to governance concerns. Rather than merely a way to redistribute money from the federal treasury to states and localities, block grants came to be seen in the 1980s as a way to redistribute *power* and control over social programs. No longer were block grants simply considered a form of “revenue sharing”; rather, block grants had been repackaged as a form of “power devolution,” and they gained political traction in this guise. In the wake of the Watergate scandals of the 1970s, when “trust” in the federal government was at a low ebb, block grants became a way for Congress to give responsibility back “to the people.”

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<sup>90</sup> See Milbrey McLaughlin, “States and the New Federalism,” *Harvard Educational Review* (November 1982): 564-583. Concerns arose with respect to Chapter 2’s “general state” approach to grant allocation, which many worried would result in larger grants to politically powerful suburbs and smaller grants to politically weak city school districts. “Th[e] general state approach to Chapter 2 distribution of funds will produce modest winners and big losers among the nation’s LEAs,” McLaughlin wrote. “The winners will be the smaller, often wealthy, suburban districts. . . . These districts, which constitute the majority of LEAs in any state, will realize a net gain as a result of Chapter 2. The big losers will be the large, urban LEAs. Primarily because of the withdrawal of ESAA funds [for voluntary school desegregation], these school districts will suffer large and disproportionate cuts in federal support for local activities. . . . The only apparent exceptions to this state response are New York and California. . . . In contrast to the Chapter 2 general enrollment approach favored in most states, New York and California have devised formulas that acknowledge the disproportionate and substantial losses that urban LEAs have suffered by incorporating a phased protective provision for ESAA funds. California, for example, will allocate Chapter 2 funds so that ESAA districts will receive 65 percent of the funds they would have received under ESAA in the first year of ECIA Chapter 2, and 35 percent the second year. This strategy cushions the severe dollar reduction that would otherwise occur and provides a two-year transition period for large urban LEAs to adjust their practices to a reduced funding level.” In other states, however, no such equitable allocation of resources was likely to occur in the absence of federal regulation. As it turned out, McLaughlin’s predictions with respect to the loss of ESAA funds under Chapter 2 proved accurate. See Anne T. Henderson, “Chapter 2: For Better or Worse?” *Phi Delta Kappan* (April 1986): 600. “Among states,” wrote Henderson, “the massive redistribution of funds away from urban and industrial areas was caused largely by the consolidation of the ESAA programs.” States found it much easier—politically—to spread money around than to concentrate it in the areas of most dire need. See also Richard Jung and Michale Tashjian, “Big Districts and the Block Grant: First-Year Fiscal Impacts,” *Phi Delta Kappan* (November 1983): 199-203. Jung and Tashjian found in their analysis of the nation’s largest school districts that most lost funds; among those that had previously received ESAA funding, the average funding loss under the block grant was 31 percent. As Milwaukee superintendent Lee McMurrin noted, “It is very difficult for me to explain to our people in Milwaukee . . . why we take these tremendous cuts all the way along the line while adjacent [suburban] districts are getting, 4, 5, 7, and 11 times more federal money than they had in times past.” See Dougherty, 41. See also Deborah Ann Versteegen, “The Great Society Meets a New Federalism: Chapter 2 of the Education Consolidation and Improvement Act of 1981” (Unpublished Ph.D. dissertation, University of Wisconsin-Madison, 1983). Versteegen noted that “Wisconsin’s only large urban area—Milwaukee—accounted for the total loss of aid to the state [under Chapter 2 of the ECIA].”

The Reagan administration used the block grant idea to reframe the federal role in education—or, rather, to back away from the idea that the federal government had any particular role to play in education at all. To ask “What specific educational goals did the Reagan administration seek to advance through block grants?” misses the point. Reagan did not believe the federal government should advance any *specific* goals in the area of education. Rather, according to the language of ECIA, he believed the federal aid should, in a fairly general way, “assist state and local education agencies to improve elementary and secondary education.” To some, such a policy seemed indicative of Reagan’s goal of cutting the federal budget for education while appearing to support education as such with state and local choices of programs (indeed, Reagan made no secret of his desire to abolish the U.S. Department of Education as a federal agency altogether). To others, such a policy seemed aimless at best and irresponsible at worst. As Milbrey McLaughlin of the RAND Corporation noted in a sharply critical report on the ECIA in 1982, “The ‘Reagan Revolution’ does not reform federal education policy in a way that will make the federal role more effective. Instead, ECIA . . . cedes responsibility for federal goals to the very agencies whose inability or unwillingness to address these goals prompted a federal education policy in the first place.”<sup>91</sup>

At issue was the extent to which fifteen years of federal aid under the ESEA had actually “built the capacity”—in terms of both ability and willingness—of state and local education agencies to run effective and equitable programs on their own. If federal aid had in fact built local capacity, then block grants could perhaps advance “federal goals” such as quality and excellence while, at the same time, decreasing federal oversight (and perhaps even cutting total federal aid).<sup>92</sup> On the other hand, if categorical aid programs had *not* built state and local capacity and had not changed state and local priorities in the realm of education, then block grants would likely fail to advance “federal goals.” It is worth noting that state education agencies—more than local agencies—had experienced a “capacity revolution” in the late 1960s and 1970s, but this revolution involved the use of federal resources to set up offices and programs that were funded *entirely* by the federal government. Consequently, this capacity revolution had not enabled state agencies to “do without” federal aid (or federal oversight). Rather, states relied heavily on federal aid as well as federal regulations to keep their educational operations going.<sup>93</sup>

Reagan’s plan to “devolve” decision-making authority to the state and local level did not prevent his administration from criticizing the work that state and local officials were doing. In 1983, a

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<sup>91</sup> Milbrey Wallin McLaughlin, “States and the New Federalism,” *Harvard Educational Review* 52:4 (November, 1982).

<sup>92</sup> See Charles M. Cooke, “Deregulation through Consolidation,” *Education and Urban Society* 14:4 (August 1982): 457-483.

<sup>93</sup> By 1984, the federal department of education, concerned about the ineffectiveness of block grants in improving academic achievement, began to rein in the states on issues of “compliance” with ECIA. See Henderson, 602. “When Education Department staff members monitored the states, they recognized the dangers that such laxity could breed. In a marked departure from its earlier, uncertain posture, the Department issued reports that set some clear standards for administrative responsibility. The most important are that state agencies need to monitor all districts for program compliance every three years (in addition to conducting fiscal and compliance audits every two years), [and] that state agencies must designate a unit responsible for overseeing the 20 percent reservation of funds [to be used for administration]. . . .” By the mid-1980s, the federal government began to re-assert its own priorities and control over the spending of federal education funds. In particular, it began to ask for evidence of achievement in exchange for aid.



year after the de-regulation and de-funding of education programs took effect under the ECIA, the administration issued a major—and extremely critical—report on the state of American education. Coordinated by federal commissioner Terrel Bell, *A Nation at Risk: The Imperative for Educational Reform* used standardized test scores to paint a bleak picture of performance levels in the schools: “Average achievement of high school students on most standardized tests is now lower than 26 years ago when *Sputnik* was launched,” the report claimed. “The College Board’s Scholastic Aptitude Tests (SATs) demonstrate a virtually unbroken decline from 1963 to 1980. Average verbal scores fell over 50 points, and average mathematics scores dropped nearly 40 points.”<sup>94</sup> The report suggested that public schools had prioritized *access* over achievement (*equity* over excellence) and had, in the process, shortchanged the very students who most needed high academic standards.

Calling for a renewed commitment to schools “of high quality throughout the length and breadth of our land,” *A Nation at Risk* also called for a nationwide system of standardized tests. “Standardized tests of achievement should be administered at major transition points from one level of schooling to another, and particularly from high school to college,” it noted. “These tests should be administered as part of a nationwide (but not federal) system of state and local standardized tests.”<sup>95</sup> This call for a nationwide system of tests marked a new era in federal educational policy, an era in which equal educational opportunities would be measured not so much in terms of financial aid, special programs, or even racial desegregation but, rather, in terms of standardized tests. This emphasis on standardized tests derived, in part, from a sense that the United States was losing its edge in vigorous economic competition with other industrialized countries, especially Japan. The Council of Chief State School Officers had represented the United States in several international forums in the early 1980s and had argued that America’s poor showing in international assessment comparisons indicated a need for federal action in the schools.<sup>96</sup>

Stressing “achievement” and “accountability” as prerequisites for government aid, the Reagan administration made schools’ continuing eligibility for aid contingent on rising test scores. If schools did not produce higher scores, they would lose federal aid. According to Reagan, this expectation of rising test scores was the only way to prevent schools from prolonging their eligibility for aid by perpetuating low scores.<sup>97</sup> And, yet, the expectation of ever-increasing scores on standardized tests had several unintended consequences. For example, some teachers artificially inflated scores to make students seem more successful; however, by inflating test scores, they unwittingly compromised their schools’ eligibility for aid targeted specifically at

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<sup>94</sup> National Commission on Excellence in Education, *A Nation at Risk: The Imperative for Educational Reform* (April 1983).

<sup>95</sup> National Commission on Excellence in Education, *A Nation at Risk: The Imperative for Educational Reform* (April 1983). Two weeks after the release of *A Nation at Risk*, the Twentieth Century Fund of New York released a report of its own. See “Second Report Urges More U.S. Aid to Schools,” *Boston Globe* (6 May 1983). See also Maris A. Vinovskis, “Missed Opportunities: Why the Federal Response to the Report Was Inadequate” in David T. Gordon, ed., *A Nation Reformed?: American Education Twenty Years after A Nation at Risk* (Cambridge, Mass.: Harvard Education Press, 2003).

<sup>96</sup> See, for example, Richard N. Holwill, ed., *The First Year: A Mandate for Leadership Report* (Washington, D.C.: The Heritage Foundation, 1982), 78.

<sup>97</sup> “Kennedy Blasts Education Cuts,” *Boston Globe* (5 April 1982).

programs for low-scoring students. Put simply, if fewer students posted low scores, then such programs lost enrollment and, in turn, aid.

Policy analysts Harriet Bernstein and David Merenda asserted that some urban districts actually had a *disincentive* to improve student achievement on standardized tests. In their words, “Since eligible children within individual schools are chosen on the basis of low achievement (and [since] the law encourages that only those with the greatest need be served), there is an additional financial disincentive to expect much and achieve well. If all the children in a Title I school were miraculously to start achieving on grade level, then the school would lose its extra positions and materials.”<sup>98</sup> As one test-industry critic added, the constantly growing pressure to show higher and higher scores on standardized tests “particularly harms under-achieving students, because the distorted test scores make them ineligible for remedial programs they would otherwise be entitled to.”<sup>99</sup> So, despite the hope that standardized tests would lead to higher achievement, it was conceivable that schools, in order to retain their grants for remedial programs serving “high-cost” students, might actually keep scores low—or *low enough* to maintain eligibility for aid. At the very least, schools with large numbers of low-scoring students faced the question: was it wiser to pursue high scores or low scores when *both* outcomes would result in lost aid?

In 1983, in order to accommodate the new emphasis on testing and the need for more sophistication in test administration, the federal contract for the National Assessment of Educational Progress (NAEP) was transferred from the Educational Commission of the States (ECS) to the Educational Testing Service (ETS), and the frequency of the exams increased. As test industry analyst Lorrie Shepard has noted, data collection strategies expanded to include a few additional test variables: “[student] background and [school] program variables were added to help in interpreting results, and sophisticated scaling methods were introduced to produce a single summary score that could be more readily understood by the public.”<sup>100</sup> With voters and legislators increasingly focused on test scores as a tool to enforce “accountability” in schools, the NAEP joined other state-level tests designed to track student performance (or basic skills or “minimum competency”) in schools. A number of states, including Texas, California, New York, North Carolina, Massachusetts, and Arizona were leaders in the development of statewide tests in the 1980s.

At first, the increasing frequency of tests seemed to lead to improved scores. At the same time, students became more adept at taking standardized tests. Over time, however, these early gains came under suspicion. In 1984, a few schools began to admit that, even as test scores had increased, so had dropout rates. “For the first time, we are seeing high-school dropout rates increasing,” former state commissioner of education in Massachusetts, Greg Anrig, revealed. “Does this mean we are getting higher standards, or does the threat of tests encourage teachers just to get rid of kids who might not pass? In other words, are we having more push-outs? And

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<sup>98</sup> Harriet T. Bernstein and Daniel W. Merenda, “Categorical Programs: Past and Present,” in Robert A. Miller, ed. *The Federal Role in Education: New Directions for the Eighties* (Washington, D.C.: Institute for Educational Leadership, 1981), 64.

<sup>99</sup> “Achievement Tests Put Pressure on Students and Schools,” *Boston Globe* (24 May 1990).

<sup>100</sup> Lorrie A. Shepard, “The Contest Between Large-Scale Accountability Testing and Assessment in the Service of Learning, 1970-2001” (Unpublished paper, 2002).

doesn't that tend to hurt minorities?"<sup>101</sup> By 1984, the high-school dropout rate in Boston exceeded 40 percent of all students. "The dropout problem is an extremely serious matter," the *Boston Globe* reported, "particularly since most of those who quit do so during the freshman or sophomore year."<sup>102</sup>

The (apparent) link between standardized tests and dropout rates did not convince policymakers that schools gave students too many tests; rather, it convinced policymakers that schools needed more resources to help students *pass*. By 1984, policymakers at both the state and the federal level were beginning to emphasize the need for supplemental aid to help students meet higher academic standards. In his State of the Union message the year before, Reagan even went so far as to propose a new categorical program to improve students' achievement in mathematics, science, and technology, and he proceeded to give more than fifty school-related speeches in the months leading up to the elections of 1984 (which he won with 97.6 percent of the electoral vote). After his re-election, Reagan appointed a new secretary of education, William Bennett, who, in turn, appointed a new assistant secretary for research and improvement, Chester E. Finn, Jr., to help press for greater emphasis on academic achievement as measured by standardized tests.

Bennett and Finn cited countless education evaluation studies to show that twenty years of "dumping money" on public schools had done little to boost academic results. They stated repeatedly that increased funding to schools could not guarantee higher test scores and insisted that excessive federal regulations had bloated state and local school bureaucracies while diverting limited resources from classrooms. Bennett's famous "wall charts" (a tool invented, actually, by one of Bennett's predecessors, Terrel Bell) ranked states in order of per-pupil spending (as well as test scores, poverty rates, teacher salaries, and dropout rates) to show that expenditures had little correlation with academic achievement. Bennett's critics, however, accused him of hiding behind a flurry of statistics that bore no connection to actual reforms in curriculum or instruction. Critics also commented that Bennett's outspoken support for national testing systems epitomized the centralization, bureaucratization, and standardization that he himself had criticized the federal Department of Education for fostering.<sup>103</sup>

Yet, in Bennett's view, the collection and dissemination of program evaluation data was a central purpose of the federal department. "This department has no function more important than the production of high quality research and accurate information about the condition of all levels of American education," he said in July of 1985. "The American people, equipped with the right answers, equipped with what's true, equipped with the facts, can in my view go about the business of fixing their schools." Even as Bennett used data generated by federally funded education research centers to push for change, however, he blamed those very centers for consuming too much of the federal education budget. He pushed hard to reorganize the

<sup>101</sup> "Too Many Education Tests, Says ETS Chief," *Boston Globe* (30 June 1985). "There are too many tests," Gregory Anrig, president of the service, last week told the joint College Board-Harvard University Summer Institute on College Admissions. "It's gotten to the point where if it moves, we test it," he said, while defending his company's college entrance examinations against recent criticisms."

<sup>102</sup> "A Man With a King-Sized Job Ahead," *Boston Globe* (4 August 1985). See also Russell W. Rumberger, "Dropping Out of High School: The Influence of Race, Sex, and Family Background," *American Educational Research Journal* 20 (Summer 1983), 199-220.

<sup>103</sup> Dave Roediger, "Assessment: The Secretary of Education's New Clothes," *Monthly Review* (May 1988): 22-27.

government's education research activities and abolished the National Institute of Education.<sup>104</sup> He brought its functions, as well as those of the National Center for Education Statistics (founded in 1972), under the purview of assistant secretary Finn at the Office of Educational Research and Improvement (OERI).

Throughout his years at the federal Department of Education, Bennett's view of America's public schools waffled repeatedly. In 1985, when he joined the Department, he thought the schools were falling apart. By 1986, however, he said that "the movement to raise academic achievement standards and restore discipline [was] showing results." By 1987, the relationship between federal funding cuts and (purported) school improvement had become a major political issue in Congress. "American education has improved on this Administration's watch," Bennett argued, but Senator Lowell P. Weicker, Jr. (R-CT) disagreed, saying that any improvements were due to Congress's *rejection* of Bennett's budgets. When Congress criticized Bennett for cutting education budgets too severely, Bennett tried to pin his cuts on Congress's own balanced-budget amendments of 1985, sponsored by Senators Phil Gramm (R-TX) and Warren Rudman (R-NH), as well as Ernest Hollings (D-SC). Congress refused to accept this justification, however. According to Senator Pete Domenici (R-N.), it was "inconceivable" that \$5.5 billion in federal budget cuts out of a total of \$19 billion could come from education.<sup>105</sup>

In 1987, Representatives Augustus Hawkins (D-CA) and Robert Stafford (R-VT) introduced the so-called Hawkins-Stafford School Improvement Amendments (P.L. 100-297), which increased federal appropriations for Title I/Chapter 1 of the ECIA by \$500 million on the condition that local school officials document measurable gains in student achievement in order to remain eligible for aid. Every school receiving Chapter 1 aid had to show that test scores or other measures of achievement increased for educationally disadvantaged children participating in the program. If participants in a given school showed no improvement for the first year, then the local district had to work with the school to improve its Chapter 1 program. If participants still showed no improvement in the second year, the state department of education had to work with the local district to review the school's program.<sup>106</sup>

This expectation of ever-rising test scores seemed the only way to prevent local schools from prolonging their eligibility for aid by perpetuating low scores. It was not clear what would happen if, after three years, participants in a Title I/Chapter 1 program still showed no improvement; officials simply hoped that extra attention from state officials as well as extra resources from the federal government would produce results. To encourage new approaches to instruction, the Hawkins-Stafford amendments increased allocations for "schoolwide reforms"—

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<sup>104</sup>"Bennett Marks Out New Path for School Research," *New York Times* (9 July 1985). See also Wayne J. Urban, *More Than the Facts: The Research Division of the National Education Association, 1922-1997* (Lanham, Md. 1998).

<sup>105</sup> See "Bennett Assailed on Education Cuts," *New York Times* (15 January 1987). Senator James Exon of Nebraska said Bennett's cuts would "never be accepted by this Congress." Bennett responded by saying that the Office of Management and Budget had recommended the deep cuts. "They set a mark," he claimed. "We met it. We are not underinvesting in education. We are inefficient."<sup>105</sup> The precise source of the cutting recommendations remained a topic of debate, but the fact was that the federal portion of school expenditures dropped from 9.6 to 6.2 percent over Bennett's years in the secretary's office.

<sup>106</sup> See Thomas Timar, "Federal Education Policy and Practice: Building Organizational Capacity Through Chapter 1," *Educational Evaluation and Policy Analysis* 16:1 (Spring 1994), 51-66.

that is, reforms unrelated to any specific category of students (such as disadvantaged, disabled, or non-English-speaking students) but designed to raise the academic achievement of all students in the Title I/Chapter 1 school. The idea of schoolwide reform was associated with a growing “effective schools” movement, which stressed whole-school reform to achieve coordinated planning and programming for all pupils and to overcome the organizational fragmentation that had accompanied the rapid proliferation of categorical programs in the 1960s and 1970s.<sup>107</sup>

Technically, the Hawkins-Stafford amendments repealed the ECIA and its block-grant emphasis and returned to the categorical framework of the ESEA. Moreover, after several years of lax federal oversight under ECIA, the Hawkins-Stafford amendments returned to the idea that federal aid should involve close federal monitoring in order to ensure measurable gains in student achievement. The chief aim of the Hawkins-Stafford amendments was to focus federal categorical programs on closing the achievement gap between advantaged and disadvantaged students. As one policy analyst noted, “On both sides of the aisle, both chambers of Congress, and both ends of Pennsylvania Avenue, a feeling existed, not always articulated, that, after more than two decades, Chapter 1 [or Title I] should be doing more than help [disadvantaged] children make modest gains; it should be helping to close the widening gap that remained between them and their more advantaged peers.”<sup>108</sup> In short, the Hawkins-Stafford amendments reinforced the idea that federal aid was necessary to equalize educational opportunities—and outcomes—in the public schools.

The year 1988 saw not only the passage of the Hawkins-Stafford amendments, but also the establishment of a National Assessment Governing Board (NAGB) “for the expressed purpose of making NAEP more responsive to the interests and concerns of various constituencies” by authorizing state-by-state reporting.<sup>109</sup> NAGB took it upon itself to change the way that NAEP scores were interpreted to the public. As Lorrie Shepard explained, “Instead of average scores and descriptive anchors showing what American students ‘could do,’ achievement levels were developed on the NAEP scales to show what students ‘should be able to do.’” At the same time, however, the federal government permitted each state to determine on its own what its students “should be able to do.” It shifted the emphasis of federal education policy from inputs to outcomes but still left the precise definition of *outcomes* up to the individual states. (In 1988, the Council of Chief State School Officers received the blessing of the U.S. Department of Education to set the content standards for NAEP’s mathematics test.).

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<sup>107</sup> See James P Comer, *Conversation Between James Comer and Ronald Edmonds: Fundamentals of Effective School Improvement* (Dubuque, Ia.: Kendall/Hunt Publishing Co., 1989). See also Michael Rutter, *Fifteen Thousand Hours* (Cambridge, Mass.: Harvard University Press, 1979).

<sup>108</sup> Nancy Kober, *The Role and Impact of Chapter 1, ESEA, Evaluation and Assessment Practices* (Washington, D.C.: Office of Technology Assessment, 1991), quoted in Thomas Timar, “Federal Education Policy and Practice: Building Organizational Capacity Through Chapter 1,” *Educational Evaluation and Policy Analysis* 16:1 (Spring 1994): 51-66. Based on the idea that schools *could* make a difference in student learning (in contrast with the findings of the Coleman Report in the mid-1960s), the effective schools movement asserted that schools should be held accountable for student performance.

<sup>109</sup> Lorrie A. Shepard, “The Contest Between Large-Scale Accountability Testing and Assessment in the Service of Learning, 1970-2001” (Unpublished paper, 2002).

A majority of states set the lowest standard of improvement allowable under federal regulations: “normal curve equivalents” (NCEs) simply “greater than zero,” which meant only the slightest measurable improvement from one school year to the next. (NCEs are not the same as grade levels, but they are analogous in that they compare progress made from year to year for students of the same age on a national scale; average students gain three NCEs per year on standardized tests). Even states that set a standard of *less than one* NCE per year were found to need improvement. Some states set a more “ambitious” standard of one full NCE per year and, in those places, the proportion of schools found to need improvement was larger (despite the fact that “average students gained *three* NCEs per year”). A few states set a standard of *negative* NCEs—meaning that *declining* student achievement was deemed acceptable from year to year. Needless to say, giving states the freedom to set their own standards did not always lead to the kind of “accountability” for achievement that federal officials wanted.

## The George H. W. Bush Years

Early in his tenure, George H. W. Bush declared his intent to be an “education president” and began to raise expectations for elementary and secondary achievement. He used close links to the business community and its increasing focus on educational outcomes to advance the movement toward a “new accountability” based on standardized performance outcomes for all students.<sup>110</sup> The groundwork for this idea had been laid in a report from the National Governors Association called *Time for Results*, released in 1986 under the chairmanship of Lamar Alexander, then governor of Tennessee. This report followed up on *A Nation at Risk*, released three years earlier, and proposed a deal between the levels of government. Schools would be released from many constraints of government regulation and in return would produce demonstrable gains in achievement. Schools were to be held accountable for their performance and would suffer consequences, including reductions in their newfound autonomy, if they did not improve. Such

### Political Snapshot

**President:** George H. W. Bush (R) 1989 - 1992

Secretary of Education: Lauro F. Cavazos, 1989  
Lamar Alexander, 1991

**Major education actions:**

1990 – Americans with Disabilities Act [Note 5]  
1990 – National and Community Service Act [Note 5]  
1990 – Child Care and Development Block Grant Act [Note 6] (repealed, 1998)  
1990 – Follow Through Act [Note 6] (repealed, 1994)  
1991 – Education Council Act  
1991 – America 2000 proposed, but not enacted  
1992 – Higher Education Facilities Act of 1992  
1992 – Higher Education Amendments of 1992 [Note 3]  
1992 – Education of the Deaf Act Amendments of 1992  
1992 – EEOC Educational, Technical Assistance, and Training Revolving Fund Act  
1993 – Education of the Deaf Act Amendments of 1993

**101st Congress (1989-1990)**

**SENATE: 55-Dem, 45-Rep.**  
Vice-President: Dan Quayle (R)  
Majority Leader: George J. Mitchell (D-ME)  
Minority Leader: Robert Dole (R-KS)  
Committee: Labor and Human Resources  
Chair: Edward M. Kennedy (D-MA)  
Ranking Minority Member: Orrin Hatch (R-UT)

**HOUSE: 260-Dem, 175-Rep.**

Speaker: James C. Wright, Jr. (D-TX), to June 6, 1989  
Thomas S. Foley (D-WA), from June 6, 1989  
Majority Leader: Thomas S. Foley (D-WA), from June 6, 1989  
Richard A. Gephardt (D-MO) June 14, 1989  
Minority Leader: Robert H. Michel (R-IL)  
Committee: Committee on Education and Labor  
Chair: Augustus F. Hawkins (D-CA)  
Ranking Minority Member: William F. Goodling (R-PA)

**102nd Congress (1991-1992)**

**SENATE: 56-Dem, 44-Rep.**

Vice-President: Dan Quayle (R)  
Majority Leader: George J. Mitchell (D-ME)  
Minority Leader: Robert Dole (R-KS)  
Committee: Labor and Human Resources  
Chair: Edward M. Kennedy (D-MA)  
Ranking Minority Member: Orrin Hatch (R-UT)

**HOUSE: 267-Dem, 167-Rep, 1-Other**

Speaker: Thomas S. Foley (D-WA)  
Majority Leader: Richard A. Gephardt (D-MO)  
Minority Leader: Robert H. Michel (R-IL)  
Committee: Committee on Education and Labor  
Chair: William D. Ford (D-MI)  
Ranking Minority Member: William F. Goodling (R-PA)

<sup>110</sup> For a concise description of the roots of “new accountability,” see Susan H. Fuhrman, “Introduction,” in Susan H. Fuhrman and Richard F. Elmore, eds., *Redesigning Accountability Systems for Education* (New York: Teachers College Press, 2004).

relaxation in regulations appealed to Bush and his desire to put a “kinder and gentler” face on his administration. The deregulation also appealed to the business community, which was looking for ways to spur innovation and improvement in the education sector.

The strong support of the business community, with its close focus on education, helped to generate broad support for many of the efforts during this administration. Secretary of Education Lauro Cavazos, whom Vice President Bush had recommended for Reagan’s late-term appointment, continued in that position but maintained a relatively low profile. The president, on the other hand, publicly engaged state and business leaders in the education reform effort. In June of his first year in office, he challenged the Business Roundtable, a group of large American companies focusing on America’s competitiveness, to concentrate on improving education in the fifty states. Bush believed that the education crisis would not be solved at the national level, but, if the federal government promoted clear goals, a “thousand points of light” would emerge at the local level, creating a host of potential models to generate improvement in a system that was viewed largely as struggling and falling further behind international competition.

A renewed emphasis on performance outcomes was in part the result of declining achievement indicators in reading, coupled with increasing expenditures. Between 1980 and 1988, average student proficiency in reading as measured by NAEP had declined from 215.0 to 211.8 among nine-year-olds and from 258.5 to 257.5 among thirteen-year-olds. Similarly, between 1980 and 1990, average verbal SAT scores dropped from 424 to 422. (Over the same interval, scores on the mathematics portion of the SAT increased from 466 to 474.) Meanwhile, district expenditures per pupil in average daily attendance rose from \$4,469 to \$5,931 (in constant dollars)—a 33 percent increase. The increase in expenditures, which came mostly from state and local government (as the federal share of school revenues fell from 9.8 to 6.2 percent in these years), was directed largely at special education programs. It did not seem to improve reading achievement for students in regular education programs.<sup>111</sup>

In September 1989, Bush convened the governors of the various states in a national education summit. Though initial plans for the summit proposed to showcase the best examples of educational practice from a number of states, planners decided instead to use the opportunity to engage the governors in a new focus on educational goals. Held in Charlottesville, Virginia, the summit included business leaders, members of the Bush administration, and forty-nine of the fifty governors (Governor Rudy Perpich of Minnesota did not attend). Tellingly, there were no educators or members of Congress in attendance (besides those from Virginia who were helping to host the conference). In welcoming remarks, Bush made clear that the federal government was a supporting and coordinating partner, not a leader of the effort. He said, “There are real problems right now in our educational system, but there is no one Federal solution. The Federal Government, of course, has a very important role to play, which is why I’m here and why so

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<sup>111</sup> Statistics from U.S. Department of Education, National Center for Education Statistics, National Assessment of Educational Progress, *The Reading Report Card, 1971-1988* (Washington, D.C.) and College Entrance Examination Board, *College-Bound Seniors: 1995 Profile of SAT Program Test Takers* (Princeton, N.J.: College Entrance Examination Board, 1995).

many members of our Cabinet are here. And we're going to work with you to help find answers, but I firmly believe that the key will be found at the State and local levels.”<sup>112</sup>

The 1989 summit was the first meeting of the governors and president devoted to education since the Depression. That fact alone made it a noteworthy event. The summit furthered the commitment to a set of “national performance goals” that focused leaders on a set of benchmarks to be achieved by the year 2000. Although the goals were written after the summit, the principles that informed them were discussed and outlined. Governor Bill Clinton of Arkansas, who had played a leading role at the summit, also led the subsequent effort to create a set of widely supported goals.

The six goals that President Bush shared with the country in his 1990 State of the Union address were:

By the year 2000,

1. All children in America will start school ready to learn.
2. The high school graduation rate will increase to at least 90 percent.
3. American students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.
4. U.S. students will be first in the world in science and mathematics achievement.
5. Every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
6. Every school in America will be free of drugs and violence and will offer a safe, disciplined environment conducive to learning.<sup>113</sup>

Although the summit developed the groundwork for these goals, it did not design or produce any strategies to realize them. To maintain a focus on the effort, the administration created the National Education Goals Panel in July 1990 by executive order. The charge to the panel was to monitor and report progress toward the goals to the public. The panel was created with fourteen people—four from administration, six governors, two senators, and two members of the House of Representatives. Years later, four representatives of state legislatures were added. The National Governors Association, having been instrumental in the development and adoption of the goals, selected Colorado governor Roy Romer as the panel’s first chair.

Initially, the panel received a good deal of attention and considerable support. It created a task force for each of the six goals to investigate potential activities for that particular area. However, without any power or mechanisms for implementation at its disposal, and without any particular

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<sup>112</sup> George H.W. Bush, “Remarks at the Education Summit Welcoming Ceremony at the University of Virginia in Charlottesville” (27 September 1989), [http://bushlibrary.tamu.edu/research/public\\_papers.php?id=966&year=1989&month=9](http://bushlibrary.tamu.edu/research/public_papers.php?id=966&year=1989&month=9) . Accessed May 7, 2009.

<sup>113</sup> National Education Goals Panel, *National Education Goals Report: Building a Nation of Learners* (Washington, D.C.: U.S. Government Printing Office, 1992), 321-322.



entities to hold accountable for progress toward the goals, the panel came to be seen as limited in its effectiveness. After years of turnover and diminished interest, funding for the panel was eliminated in 2002, and it ceased to exist. Though it did not directly stimulate a great deal of activity and met its demise without seeing the goals achieved, the panel did bring together Republicans and Democrats around a shared set of goals and helped to focus the nation's attention on expected student outcomes.

Although President Bush's emphasis on the national goals kept attention on education, the administration did not use this opportunity to advance or enact any significant federal education legislation during its first two years. At the end of 1990, as the country was preparing for the Gulf War with Iraq, Bush replaced Cavazos as secretary of education with Lamar Alexander, the former governor of Tennessee, who was then serving as president of the University of Tennessee. The selection of Alexander signaled a desire to raise the profile of the Department of Education and the federal government in taking action on education. In April 1991, with Alexander in place as the prime architect, Bush presented his America 2000 proposal.

America 2000 included several programs related to implementation of the goals and ideas that the National Goals Panel had articulated.<sup>114</sup> It proposed the creation of national standards and voluntary national tests (American Achievement Tests) in five core subject areas—English, math, science, history, and geography—to be administered in grades four, eight, and twelve. These tests would measure progress on the third national goal. America 2000 also:

- Provided direct federal grants to develop 535 New American Schools (one in each of 435 congressional districts and 100 more around the country). These schools were expected to demonstrate reform strategies and serve as models for other schools in their areas.
- Included support for local organizing to advance the achievement of national goals.
- Required report cards on the progress of schools and districts.
- Included a plan for some federal support of private school vouchers.

Early on, America 2000 received some key support. Albert Shanker, leader of the American Federation of Teachers, supported the establishment of clear standards, as did business leaders, who also liked the national testing provisions. When the administration bill based on the America 2000 plan went to Congress in 1991, it included most but not all of the initial concepts. For example, it did not provide for the creation of national standards and tests; instead, it required the administration to notify Congress when voluntary instruments would be developed through appropriations already allotted to the Department of Education. Democrats controlled both the Senate and House at that time, and the administration had to generate bipartisan support to enact its bill. In the House, Republicans introduced the bill; in the Senate, Democrats Claiborne Pell and Edward Kennedy took the lead so they could control action on the bill through the Committee on Labor and Human Resources.

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<sup>114</sup> For a full description of the proposal, see *America 2000: An Education Strategy* (Washington, D.C.: U.S. Department of Education, 1991).

Because no significant education legislation had passed in the previous two years, members of both parties in the Congress worked to draft viable legislation in 1991 and 1992. The major contested issues included national testing, private school vouchers, the Bush administration's proposal to bypass both the states and local school districts, and the extent to which added federal funding would be authorized through the legislation.

Advocacy groups and members of Congress voiced a wide array of concerns. Liberals were wary of the testing provision, stating that more tests alone would only demonstrate the widely known fact that poor and minority students perform at lower levels. Though they limited their criticism of a Republican president, conservatives felt that the proposal for national standards and assessments gave the federal government too strong a role and began to usurp state power. An assortment of experts, advocates, and academics expressed concern about the increasing potential for national testing.<sup>115</sup>

During the hearings for the bill, the concept of “systemic reform” first appeared in widespread public discussion. Endorsed by the National Governors Association, the Council of Chief State School Officers, and other organizations, this theory pushed for aligning curriculum, standards, assessments, teacher training, and resources. As described by Marshall Smith and Jennifer O’Day in their seminal article “Systemic School Reform,”<sup>116</sup> systemic reform would “set the conditions for change to take place not just in a small handful of schools or for a few children, but in the great majority.” The two authors placed a heavy emphasis on the role of the *states*—a role they argued had been previously neglected in favor of school and district efforts at restructuring and improvement. For some, this argument raised concern about the direct federal-to-school grants in Bush’s proposal.

It also connected well with the groundwork that had been laid at the education summit, as well as with reform efforts already under way in several states, most notably California, Maryland, Massachusetts, and New York. In California, State Superintendent of Public Instruction Bill Honig had embarked on a major effort to create new curriculum frameworks, develop aligned texts, provide statewide content-based professional development, and require new assessments. This initiative in the largest state in the union, together with the experience in other states, demonstrated what an aligned state education system might look like. The vision appealed to many.

In mid-1991, as the popularity of systemic reform grew in Congress, and while the Senate and House still debated America 2000, President Bush submitted legislation to authorize a National Council on Education Standards and Testing. Bipartisan in nature, this Council would be responsible for considering the desirability and feasibility of establishing national standards and assessments. Once established by law, the Council worked quickly and, early in 1992, issued a final report that confirmed the desirability of national standards aligned with assessments. However, rather than the set of national tests advocated in America 2000, the Council

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<sup>115</sup> For more discussion of the supporters and opponents of America 2000 and the recommendation of the National Council on Education Standards and Testing, see Diane Ravitch, *National Standards in American Education: A Citizen’s Guide* (Washington, D.C.: Brookings Institution Press, 1995), 143-146.

<sup>116</sup> Marshall Smith and Jennifer O’Day, “Systemic School Reform,” in Susan H. Fuhrman and Betty Malen, eds., *Politics of Curriculum and Testing* (Bristol, Pa.: Falmer Press, 1991).

recommended a system of assessments that would allow states greater independence in selecting curricula and assessment vehicles. This meant that while there would be national standards for achievement, state curricula would not be guided by national tests. Additionally, states would not have to participate in assessments to be eligible for federal support.

The systemic reform argument also raised opportunity-to-learn (OTL) standards as an essential counterpart to student performance standards. Smith and O’Day recognized that “districts and schools with large numbers of poor and minority students often have less discretionary money to stimulate reform, less [*sic*] well-trained teachers, and more day-to-day problems that drain administrative energy.” Without attention to these inequities, even with many of the elements of systemic reform in place, “we will surely enlarge the differences that continue to exist between the quality of instruction available to rich and poor, minority and majority.” This idea was controversial, because conservatives viewed it as a way for schools and districts to justify increases in education spending (particularly at the local level) or to avoid accountability by claiming that they did not have the resources to make such achievement levels possible.

While recognizing that OTL standards, even at a voluntary level, had not been created, the National Council on Education Standards and Testing asserted that the standards were necessary to ascertain the feasibility of student performance standards. Ultimately the Council compromised on OTL standards (what it called “delivery and system performance standards”), asserting that they should not be national standards, but rather “developed by the states collectively from which each state could select the criteria that it finds useful for the purpose of assessing a school’s capacity and performance.”<sup>117</sup> This was a way to avoid defining national quality requirements for schools while supporting national performance requirements for students.

The creation of school delivery or opportunity-to-learn standards was just one of many issues debated during the revisions, amendments, and discussion surrounding America 2000. As the House and Senate considered the bill through 1992, various portions were revised or eliminated.<sup>118</sup> In the final House-Senate conference report, the private school choice option was eliminated, funding for national standards and assessments was limited, and support for New American Schools was submerged in a state-based program of federal funding for school reform and professional development. Shortly before the November election, the report came out of conference and was passed with strong bipartisan support in the House. Although there was similar support in the Senate, the report died because of procedural “earmarks” inserted by a couple of Republican senators. They held up final Senate action, awaiting signals from the White House as to whether the president wanted the legislation to pass or have the issues held until after the election. With strong urging by Secretary Alexander, the president let the bill die, gambling that he would have a second term to try once again with his initiatives. Four years into his presidency—and three years after expectations had been raised with the education summit—no substantial education legislation had been enacted.

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<sup>117</sup> National Council on Education Standards and Testing, *Raising Standards for American Education: A Report to Congress, the Secretary of Education, the National Education Goals Panel, and the American People* (Washington, D.C.: U.S. Government Printing Office, 1992).

<sup>118</sup> For a more complete discussion of the various versions and titles of America 2000 bills as they passed through the House and Senate, see Jennings, 25-32.

To move forward with the idea of developing national standards in the absence of new legislation, Secretary Alexander used federal discretionary grants to support this work by professional organizations. The National Council of Teachers of Mathematics (NCTM) had responded, on its own accord, to the charge issued in *A Nation at Risk* by organizing a broad-based effort to write a set of standards. The standards were released in 1989 to general acclaim and thereafter were regularly cited as an example of how voluntary standards could inform teaching, texts, and tests. Using federal grants from the Department of Education, organizations in other disciplines produced voluntary national standards in their fields. These standards, which did not have the “drawback” of being required or produced directly by the federal government, were used by many states as the basis for their own standards.

Not all of these private efforts were successful. Early attempts in English and history were seen as inadequate or controversial and became the subject of considerable public debate. Overall, however, this pattern of developing standards demonstrated that the federal government could have an impact on states and the standards movement for relatively small amounts of money.

One impact of the growing use of standards was the expectation that all students should have access to high-quality education as measured by student results rather than by spending per student. Increasingly, the preferred way to compare the quality—or *equality*—of education provided across groups (for example, racial or income groups) was to test students in all groups with an instrument presumably based on the same academic curriculum, then compare scores from school to school and district to district within a state. This approach enables correlation of financial inputs with educational outcomes in order to tell whether different groups of students in different schools had access to “equal” educational opportunities. If test scores were equal, then, analysts assumed, educational opportunities must have been equal, too.

Beginning in the late 1980s and into the 1990s, a series of lawsuits contending that educational opportunities were not equal began to find more success. Since 1989, plaintiffs have prevailed in eighteen of the twenty-nine major state financial equalization cases. Some of those plaintiff victories were in the states where the cases had failed only a couple of years earlier. In part, these results were due to a shift away from arguing that education was not *equitable* in funding to arguing that it was not *adequate* in opportunity. Equity claims attempted to use the equal protection clauses in most state constitutions to argue that disparities in spending were essentially unfair. In the adequacy claims, plaintiffs often contended that the opportunities needed for students to meet the standards were inadequate. Many state courts found the adequacy argument compelling and have endeavored to determine appropriate levels of school financing that will allow all students to achieve the mandated standards.<sup>119</sup>

While the focus on standards and school finance was developing, learning standards and changes were making an impact on school desegregation, special education, and the education of students whose native language is other than English. As state courts exhibited more support for school-finance redistribution claims, federal courts were backing away from school desegregation orders, allowing many urban districts to return to “neighborhood school” or “freedom-of-choice”

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<sup>119</sup> These data, together with further discussion of trends in education-finance litigation, can be found in Michael A. Rebell, “Adequacy Litigations: A New Path to Equity?” in Janice Petrovich and Amy Stuart Wells, eds., *Bringing Equity Back: Research for a New Era in American Educational Policy* (New York: Teachers College Press, 2005).

plans, which tend to result in racially imbalanced enrollments. After the U.S. Supreme Court's 1974 decision in *Milliken v. Bradley* limited desegregation efforts to the boundaries of a municipality, urban schools filled with greater and greater concentrations of minorities, and busing orders had less and less effect on the overall racial composition of any given school (simply because there were fewer white students to enroll in the cities' predominantly minority schools). By the 1990s, federal courts had begun to respond to this situation by releasing schools from what the judges considered "ineffectual" busing plans.

As Jack Jennings noted, "The dissolution of federal court orders requiring the busing of schoolchildren to achieve integration will in all likelihood lead to further racial isolation."<sup>120</sup> The end of race-based school assignments and the expansion of school choice plans further indicated that racial integration no longer lay at the center of judgments of "educational equality" or "educational adequacy" in the public schools. Increasingly, policymakers turned their attention to improving the quality of education by improving instructional programs *within* racially imbalanced schools—an emphasis resembling the approach that had guided the early implementation of the ESEA in the mid-1960s. This emphasis on improving instructional programs applied not only to inner-city schools with majority black enrollments but also to urban schools with majority Hispanic enrollments. As Jennings noted, "Children of Hispanic origin are also becoming increasingly concentrated in schools with children who share their ethnic background, and Hispanic children are fast becoming the largest minority group in American schools."<sup>121</sup>

The idea of common achievement standards was seen in some quarters as supporting the move away from a focus on desegregation. If all students were meeting academic standards, it would be difficult to argue that they needed access to either more funds or a more diverse schoolhouse. The focus on achievement standards also proved complex in the case of students diagnosed with disabilities. It was not clear whether the same "standards" should apply to *all* students equally, or whether different standards should apply to different students, depending on their different abilities. Over the years, diagnoses for "learning disabilities" had increased exponentially, so the resolution of this issue was not incidental. By the late 1980s, nearly one out of every ten students in the nation's public schools was suspected of having some form of learning disability. (Similarly, after autism and traumatic brain injury joined the list of federal grant-eligible categories, the rate of diagnoses in these areas skyrocketed.) Some said that with improved diagnostic techniques and due-process protections, high rates of diagnosis represented an accurate picture of disability in the nation's schools, but others noted how arbitrary and capricious the diagnostic process could be.

Policy analysts Richard Weatherly and Michael Lipsky observed as early as 1977 that referrals for special education often had little to do with bona fide disabilities. "The chances of a child being referred were associated with presumably extraneous factors: the school system and school attended, the child's disruptiveness in class, his or her age and sex, the aggressiveness and socio-economic status of the parents, the current availability and cost of services needed, and the presence of particular categories of specialists in the school system." Weatherly and Lipsky saw that frequently, "teachers referred (dumped) students who posed the greatest threat to classroom

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<sup>120</sup> Jennings, 516-522.

<sup>121</sup> Jennings, 516-522.

control or recruited those with whom they were trained to work. . . . In many instances, those doing the screening were actually referring children to themselves.”<sup>122</sup> Under these circumstances, it was difficult to tell whether federal aid for the disabled was being spent on children who were actually—or clinically—disabled, or whether it was being used to generate additional funds (otherwise unavailable from state and local sources) through the overdiagnosis of children for aid-eligible programs.

The issue of increasing diagnoses led Congress in 1985 to pass the Health Research Extension Act (P.L. 99-158), which called for an Interagency Committee on Learning Disabilities to be run by the National Institute of Child Health and Human Development (NICHD). Given that 80 percent of students with learning disabilities had difficulty with reading, the NICHD focused its energy on this area, finding that reading disabilities were associated with subtle chromosomal and neurological differences and were, therefore, biologically “real” rather than socio-politically created—at least in the more severe range. This finding had implications not only for the implementation of specialized programs for the disabled but also for the implementation of standard-based reform and the use of the same tests for all students. “It is unclear whether children in the more severe range of disability can achieve age- and grade-approximate reading skills,” the NICHD held, “even with intense, informed intervention provided over a protracted period of time.”<sup>123</sup> In other words, it made little sense to build school “accountability” provisions around a hope for equalized test scores among all students.<sup>124</sup>

The findings led to dilemmas not only in the area of standards-based reform but also in special-education funding. As schools shifted from underidentifying to overidentifying students with disabilities, cost control became a major concern. One solution to this problem was the idea of “census-based” funding, which assumed an equal incidence of handicap identification across the total pupil population. Yet some objected to census-based funding on the grounds that it would lead again to underidentification of disabilities (because, if states receive the same amount of federal aid regardless of their number of disabled students, they would have an incentive *not* to identify more students as disabled than existing aid would cover).<sup>125</sup>

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<sup>122</sup> See Weatherly and Lipsky, 102, 106-107, 114. As Lorrie Shepard has written, “At least half of the learning disabled population could be more accurately described as slow learners, as children with second-language backgrounds, as children who are naughty in class, as those who are absent more often or move from school to school, or as average learners in above-average school systems.” See Lorrie Shepard, et al., “Characteristics of Pupils Identified as Learning Disabled,” *Journal of Special Education* 16 (1983): 73-85.

<sup>123</sup> See also Donald L. MacMillan, et al., “The Labyrinth of IDEA: School Decisions on Referred Students with Subaverage General Intelligence,” *American Journal on Mental Retardation* 101:2 (September 1996), 161-174; Lorraine M. McDonnell, Margaret J. McLaughlin, and Patricia Morison, eds., *Educating One and All: Students with Disabilities and Standards-Based Reform* (Washington, D.C.: National Academy Press, 1997); and Thomas Hehir and Thomas Latus, *Special Education at Century’s End: Evolution of Theory and Practice Since 1970* (Cambridge, Mass.: Harvard University Press, 1992).

<sup>124</sup> See also M. Suzanne Donovan and Christopher T. Cross, eds., *Minorities in Special and Gifted Education* (Washington, D.C.: National Academy Press, 2002).

<sup>125</sup> Somewhat ironically, diagnosis rates were often higher in affluent districts than in poor districts, giving the impression that impoverished areas were comparatively free of learning disabilities. See Margaret J. McLaughlin and Maria F. Owings, “Relationships among States’ Fiscal and Demographic Data and the Implementation of P.L. 94-142,” *Exceptional Children* 59:3 (December-January 1993), 247. According to McLaughlin and Owings, “States with higher per-capita income tended to have higher cumulative placement rates in special classes and all more restrictive settings.”

The meaning of common standards and assessments was also challenging for English language learners. The focus on improving instructional programs coincided with a rather sudden withdrawal of financial support from bilingual programs, the “outcomes” of which had become a subject of widespread debate. As early as 1988, as part of the Hawkins-Stafford amendments, Augustus Hawkins (the African-American chair of the House Education and Labor Committee) agreed, under pressure from the Reagan administration, to increase the proportion of “alternative” programs (i.e., immersion or English-Only programs) permissible under the law from 4 percent to 25 percent of the total. He also agreed to limit the time a student could remain in a bilingual program to three years (except in extraordinary cases, when the limit was extended to five years). So, even while the Hawkins-Stafford amendments directed more money to low-achieving schools, non-English-speaking students in those schools were often forced into English-Only classes.

Over the next decade, as the standards movement gained momentum and standardized tests came to dominate the assessment of schools, non-English-speaking pupils faced increasing pressure to show high scores on English exams. The National Academy of Education warned that a heavy reliance on standardized test scores might skew the work of teaching, but, by the late 1980s, political pressure to show accountability through test scores was becoming inescapable. Despite the Academy’s caution “a) that future assessments, limited in the competencies they measure, might come ‘to exercise an influence on our schools that exceeds their scope and true merit,’ (p. 51) and b) that ‘simple comparisons are ripe for abuse and are unlikely to inform meaningful school improvement efforts’ (p. 59),” public demand for “results” was overwhelming. The complexities of testing policies for disabled, limited-English-speaking, and other students with special circumstances did not weaken this demand.<sup>126</sup>

In addition to an emphasis on systemic reform, the idea of school choice garnered increasing attention in the 1990s. As noted earlier, President Bush’s America 2000 proposal included publicly funded vouchers for parents to enroll their children in private schools. Charter schools offered yet another option in the school choice arena. As early as the 1980s, the relatively new concept of charter schools—that is, schools with special or independent dispensations, or charters, from their states to experiment with alternative publicly financed approaches to education—had emerged on the national scene. The name *charter schools* can be traced back to Dr. Ray Budde, a professor at the University of Massachusetts at Amherst, who wrote a report, *Education by Charter*, in 1988. In this report, Budde describes the shift of responsibility and control over student learning away from removed administrators to those who do the teaching.<sup>127</sup> Minnesota was the first state formally to allow the creation of charter schools, and other states eventually followed, including Arizona, California, Georgia, Massachusetts, Colorado, Delaware, Hawaii, Idaho, Maryland, New Jersey, New York, Tennessee, Wisconsin, Rhode Island, Washington, Missouri, Maine, Illinois, Texas, and Florida. The basic idea behind charter schools was that more freedom to innovate at the school level would lead to improved results.

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<sup>126</sup> Quoted in Lorrie A. Shepard, “The Contest Between Large-Scale Accountability Testing and Assessment in the Service of Learning, 1970-2001” (Unpublished paper, 2002).

<sup>127</sup> See Ray Budde, *Education by Charter: Restructuring School Districts* (San Francisco: WestEd, 1988).

Relatively early in the Bush administration, the charter school movement gained support from the American Federation of Teachers (AFT), which previously had supported ideas such as site-based management, schools-within-schools, and school-community partnerships. In a 1988 *New York Times* column and a speech at the National Press Club, AFT president Albert Shanker described charter schools as a promising front in improving education. With his faith in teachers as professionals, he saw the freedom that charter schools could offer and the scientific results from standardized tests as fostering a good environment for teachers and students to thrive.<sup>128</sup> Although interest in charter schools was growing, there was no legislation enacted to support them during this administration.

Between 1989 and 1992, federal spending for education increased by 25 percent (meanwhile, the budget of the federal Department of Education increased 41 percent). In unadjusted dollars, federal aid to education had increased from \$5.3 billion in 1965 to \$23.3 billion in 1975 to \$40.0 billion in 1985 to \$71.7 billion in 1995. Although the administration of President George H. W. Bush did not produce significant breakthroughs in education legislation, funding for extant programs did increase, and the stage was set for new federal strategies to improve education results.

## The Clinton Years

In 1992, Bill Clinton, a popular Democratic governor of Arkansas who had been instrumental in the 1989 education summit and the formulation of the national education goals, was elected president. Clinton's campaign against President Bush focused strongly on commitment to federal action for education. He drew on ideas promoted at the Charlottesville, Virginia, summit and the work of the National Education Goals Panel, on which he served. In addition, he carried forth initiatives from the previous Congress and built on the work of the states undertaking reform.

Like Bush, Clinton selected a governor as his secretary of education. In this case, it was Richard Riley, a popular former governor of South Carolina who had been active with the Southern Regional Education Board in its work to raise standards and

### Political Snapshot

**President: William J. Clinton (D) 1993 – 1996 First Term**  
Secretary of Education: Richard W. Riley

#### Major education actions:

1994 – Reauthorization of ESEA  
1994 – School-to-Work Opportunities Act [Note 4]  
1994 – Improving America's Schools Act [Note 6]  
1994 – Goals 2000: Educate America Act [Note 2]  
1994 – Education Infrastructure Act  
1994 – Bilingual Education Act amended  
1996 – Museum and Library Services Act [Note 4]

#### 103rd Congress (1993-1994)

##### SENATE: 57-Dem, 43-Rep.

Vice-President: Albert Gore (D)  
Majority Leader: George J. Mitchell (D-ME)  
Minority Leader: Robert Dole (R-KS)  
Committee: Labor and Human Resources  
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##### HOUSE: 258-Dem, 176-Rep, 1-Other

Speaker: Thomas S. Foley (D-WA)  
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Ranking Minority Member: William F. Goodling (R-PA)

#### 104th Congress (1995-1996)

##### SENATE: 52-Rep, 48-Dem.

Vice-President: Albert Gore (D)  
Majority Leader: Robert Dole (R-KS), resigned position on June 11, 1996  
Trent Lott (R-MS), elected June 12, 1996.  
Minority Leader: Thomas A. Daschle (D-SD)  
Committee: Labor and Human Resources  
Chair: Nancy Landon Kassebaum (R-KS)  
Ranking Minority Member: Edward M. Kennedy (D-MA)

##### HOUSE: 230-Rep, 204-Dem, 1-Other

Speaker: Newt Gingrich (R-GA)  
Majority Leader: Richard K. Armey (R-TX)  
Minority Leader: Richard A. Gephardt (D-MO)  
Committee: Committee on Economic and Educational Opportunities  
Chair: William F. Goodling (R-PA)  
Ranking Minority Member: William L. Clay (D-MO)

<sup>128</sup> See Albert Shanker, "Where We Stand: Convention Plots New Course, a Charter for Change," *New York Times*, 10 July 1988, and subsequent columns for further discussion of AFT positions regarding charters.



performance in the South. Riley would serve with Clinton all eight years he was in office, making him the longest-tenured secretary of education in history.

Clinton's first legislative proposal—and success—was called Goals 2000: The Educate America Act. Introduced in 1993, the act was influenced by recommendations from the National Council on Education Standards and Testing, the Goals Panel, and the experience of states with systemic reforms. In the act, Congress legislated the six national goals of the National Education Goals Panel while adding two more, which focused on teacher quality and parental responsibility. These last two topics met with opposition from many early advocates of national goals, who wanted to restrict goals to student performance. The Goals 2000 legislation passed in February 1994, four and a half years after the education summit and a year into Clinton's first term.

The core of Goals 2000 was a grant program to support state development of standards and assessments and school district implementation of standards-based reform. Goals 2000 was not another discrete federal program, and it required very little regulation. It recognized, and supported, the systemic reform efforts that many states had under way. Any state that was basically adhering to the idea of standards-based, systemic reform and had a planning process to support that effort could get funding under Goals 2000. It was an unusual federal program because it did not target a particular group of students or subject areas; rather, it supported a generic reform strategy that emphasized the development of state standards and the assessments needed to measure progress toward them. It required that in the last three of five years, most of the funds were to go to local districts and schools to implement state standards.<sup>129</sup>

States took full advantage of the funding that became available for broader uses, in contrast with the categorical funds that had traditionally come from the federal government. One of the largest

### Political Snapshot

**President: William J. Clinton (D) 1997 – 2000 Second Term**  
Secretary of Education: Richard W. Riley

#### Major education actions:

- 1997 – Individuals with Disabilities Education Act (IDEA) [Note 2]
- 1998 – Carl D. Perkins Vocational and Technical Education Act [Note 4]
- 1998 – Workforce Investment Act [Note 4]
- 1998 – Head Start Amendments [Note 6]
- 1998 – COATS Human Services Reauthorization Act [Note 6]
- 1998 – Indian Education Assistance Act (amends Johnson-O'Malley) [Note 2]
- 1998 – Higher Education Amendments of 1998 [Note 3]
- 1999 – Education Flexibility Partnership Demonstration Act (Goals 2000)
- 2000 – Sections 112 & 115 of American Competitiveness in the 21st Century Act [Note 4]

#### 105th Congress (1997-1998)

##### SENATE: 55-Rep, 45-Dem.

Vice-President: Albert Gore (D)  
Majority Leader: Trent Lott (R-MS)  
Minority Leader: Thomas A. Daschle (D-SD)  
Committee: Labor and Human Resources  
Chair: James M. Jeffords (R-VT)  
Ranking Minority Member: Edward M. Kennedy (D-MA)

##### HOUSE: 228-Rep, 206-Dem, 1-Other

Speaker: Newt Gingrich (R-GA)  
Majority Leader: Richard K. Armey (R-TX)  
Minority Leader: Richard A. Gephardt (D-MO)  
Committee: Committee on Education and the Workforce  
Chair: William F. Goodling (R-PA)  
Ranking Minority Member: William L. Clay (D-MO)

#### 106th Congress (1999-2000)

##### SENATE: 55-Rep, 45-Dem.

Vice-President: Albert Gore (D)  
Majority Leader: Trent Lott (R-MS)  
Minority Leader: Thomas A. Daschle (D-SD)  
Committee: Health, Education, Labor and Pensions (HELP)  
Chair: James M. Jeffords (R-VT)  
Ranking Minority Member: Edward M. Kennedy (D-MA)

##### HOUSE: 223-Rep, 211-Dem, 1-Other.

Speaker: J. Dennis Hastert (R-IL)  
Majority Leader: Richard K. Armey (R-TX)  
Minority Leader: Richard A. Gephardt (D-MO)  
Committee: Committee on Education and the Workforce  
Chair: William F. Goodling (R-PA)  
Ranking Minority Member: William L. Clay (D-MO)

<sup>129</sup> Robert B. Schwartz and Marian A. Robinson, "Goals 2000 and the Standards Movement," in Diane Ravitch, ed., *Brookings Papers on Education Policy: 2000* (Washington, D.C.: Brookings Institution, 2000).

recipients and most visible users of Goals 2000 funds was the state of Texas: between 1994 and 1997, Governor George W. Bush's state received over \$100 million from the program, which in Texas was called Academics 2000. (Many other states also used titles other than Goals 2000 to emphasize that theirs were state initiatives with federal support, rather than instances of a federal program that set their standards.) This funding supported the development of the state's standards and tests—Texas Essential Knowledge and Skills (TEKS), an aligned assessment program—as well as widespread professional development and education programs. In Texas and most states, the Goals 2000 funding allowed for development and implementation of systemic reform much sooner than would have been possible with the state's own tax revenues. When Governor Bush campaigned for president in 2000, the state's record in education testing and reform was one of his major issues.

The flexibility and innovation that the Goals 2000 program accorded to the states was necessary to assure that the federal government was not using the act to establish national standards. As a result, however, the act could not assure that state standards were of uniformly high quality. Clinton had proposed the creation of a National Education Standards and Assessment Council as part of Goals 2000. This council would have reviewed state standards and assessments to make sure that they were both comparable across states and sufficiently rigorous. Later renamed the National Education Standards and Improvement Council (NESIC) and slightly modified in the bill, this council would have had the potential of creating criteria to assess the quality of state standards and tests. However, conservatives resisted NESIC on the grounds that it would mandate too much federal control of state decisions, and liberals were concerned about the potential for promoting national tests. To enact the Goals 2000 legislation, Clinton accepted the elimination of NESIC.

The reliance of Goals 2000 on state-by-state initiatives meant that its impact varied greatly from state to state, district to district, even school to school. Given that the vast majority of funding had to be spent at the district level, there was not a great deal of money available for building state capacity to help underresourced districts. Moreover, with a relatively small amount of funds spread among some 5,000 districts, there were major problems in creating a critical mass of support for preparing teachers to use new standards and develop instructional materials. An Urban Institute study on the use and effects of Goals 2000 grants found that small and/or high-poverty districts particularly struggled with the implementation of standards-based reform.<sup>130</sup> Specifically, these districts had difficulty accessing the support that would have allowed them to design successful programs and strategies. While high-poverty districts were well aware of federal programs targeted at helping the poor, they did not have expertise in standards-based reform and therefore could not provide technical assistance to schools or connect to essential information on this topic. Small districts also struggled in the Goals 2000 environment: they too were not connected to sources of expertise and information—likely due to the small number of professionals not directly involved in teaching—and thus did not have access to resources that might have helped them.

Despite shortcomings at the local level, Goals 2000 provided the major source of funds to move forward with systemic reform efforts. State education agencies developed these reforms, which

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<sup>130</sup> See Jane Hannaway and Kristi Kimball, *Reports on Reform from the Field: District and State Survey Result, Final Report* (Washington, D.C.: Urban Institute, 1997).

received support from governors who had participated in the 1989 education summit and from business leaders who were committed to those principles. Goals 2000 funding began at \$94 million in 1994 and, with strong advocacy from business and education groups, climbed to \$490 million by 1999. Overall, this act provided \$2 billion to promote standards-based reform. Though some states initially declined the Goals 2000 funds on the grounds of preserving states' rights, forty-eight accepted grants under the Goals 2000 program within two years of its initiation. Within three years, more than one-third of the country's almost 15,000 school districts had received a Goals 2000 grant through their state.

In parallel with Goals 2000, Clinton advanced proposals for reauthorization and modification of the Elementary and Secondary Education Act (ESEA), now called Improving America's Schools Act or IASA (P.L. 103-382). The president wanted Goals 2000 enacted first, so it would set state standards and tests for the reauthorized act; he did not want Goals 2000 and IASA to be merged, fearing that any additional money that might be garnered for Goals 2000 would simply be used to support Title I and not the broader systemic reforms he envisioned. Clinton prevailed. The bills passed in sequence, and in October 1994, IASA was signed into law.

Prior to IASA, the Title I program of ESEA permitted states to use achievement "standards" for economically disadvantaged students that were different from, and less challenging than, those for other students. IASA, in contrast, required that the standards for Title I and non-Title I students be the same: that is, both sets of students must meet the standards that states were developing with support from Goals 2000. Together, therefore, IASA and Goals 2000 helped states to advance their overall standards-based reforms for all students and directed the \$11 billion allocation of Title I toward helping children in poverty meet the new state standards.

The IASA law received widespread support from both Republicans and Democrats who liked the focus on standards. Also voicing support were the education and business communities and the Commission on Chapter 1, whose report described the Chapter 1 program as focusing mostly on low-level programs with little accountability for improved outcomes among disadvantaged students. IASA—which restored the original 1965 name, *Title I*, to the largest program directing federal grants to low-achieving students in low-income districts—marked one of the most significant uses of federal power in state and local education policy. By requiring that standards and accountability be the same for all children, it made Title I funding, the largest single federal funding stream for elementary and secondary education, contingent on state and local decisions around standards, testing, teacher training, curriculum, and accountability.

The 1994 reauthorization also created the Eisenhower Professional Development Program, which supported professional development efforts in the subject areas, created a new technology program to support the development and delivery of software for standards-based instruction, and advanced other objectives through the Safe and Drug-Free Schools and Communities Act. All of this was done to assist schools and districts in meeting the standards they had set.

To help free districts from what were portrayed as the constraints of federal policy, Clinton promoted something called EdFlex—the ability for states to get waivers from some federal requirements. Though EdFlex was initially conceived as a relatively narrow pilot program, the

number of states and districts that were eligible for waivers increased over time.<sup>131</sup> The waivers were meant to allow districts the flexibility they needed to align practices with the changing state environments in which they now found themselves. These changes were due in large part to the convergence of the theories of systemic reform and new accountability. Along with increased flexibility, the other 1994 legislative changes were meant to operate in the larger context outlined by Goals 2000.

As part of systemic reform, both the IASA and Goals 2000 required states to align their program assessments (i.e., state tests) with clear subject-matter standards.<sup>132</sup> The idea was to create a coherent framework for curriculum, assessment, teacher training, performance objectives, and financial accountability.<sup>133</sup> In other words, states and districts were to use federal aid to promote the alignment of key factors that enhance academic achievement. IASA required states to develop content and performance standards along the same lines as Goals 2000, with assessments aligned to those standards.

To support these efforts in low-performing schools and districts and to reduce the unintended consequences of pull-out programs (which required Title I-eligible students to be separated from others for instruction), the 1994 reauthorization made it easier for schools to use Title I funds for schoolwide programs. In the past, only schools in which 75 percent of the students were poor could use Title I funds for such programs. The legislation lowered the threshold to 50 percent.

IASA also focused Title I funds on the schools and districts with the poorest student populations. Access to these funds had traditionally been based on a combination of poverty and low performance. However, this system—while targeting funds to those in most serious need—had given some schools the perverse incentive to keep scores low in order to retain much-needed federal funds. Along the same lines as other changes, IASA permitted larger numbers of schools to depend on funding that could be used for systemic, rather than narrowly targeted, improvement efforts.

Though the federal contribution to education in 1994 remained low—about 7 percent of education funding in most states—the federal government was increasing its demands on state and local education agencies in exchange for federal dollars. This growing federal role in shaping education for all students provided the basis for increased federal funding in the years 1995–2000 and foreshadowed the even larger impact sought by Clinton’s successor.

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<sup>131</sup> For a discussion of how districts react to waiver programs, see Susan Fuhrman and Richard Elmore, “Ruling Out Rules: The Evolution of Deregulation in State Education Policy,” *Teachers College Record* 97:2 (1995), 279-309.

<sup>132</sup> Christopher Cross summarized the concept of systemic reform: “Adults in the system must be held accountable for performance, but performance must be based on academic content and performance standards developed and adopted at the state level. Curriculum must be developed that ensures that the standards are taught, and teachers trained to teach that material. Finally, new tests must be developed that are carefully aligned to the standards, which in turn must be reflected in the curriculum, and adults (and students) must be held accountable for children’s learning the material.” Cross, 113.

<sup>133</sup> See Smith and O’Day, 233-267; Margaret Goertz, Robert E. Floden, and Jennifer O’Day, *Studies of Education Reform: Systemic Reform* (Washington, D.C.: U.S. Department of Education, Office of Educational Research and Improvement, Office of Reform Assistance and Dissemination, 1995); and David K. Cohen, “What Is the System in Systemic Reform?” *Educational Researcher* 24:9 (December 1995), 11-17.

Also passed in 1994 was the School-to-Work Opportunities Act (STWOA), jointly administered by the Departments of Education and Labor to provide work experience for high school and post-high school students. This program also followed the new, less structured, more system-focused plans of the Clinton administration. Funds disbursed under the program were to help states develop systems that would link school and work experiences. The combination of school and work would result in both a high school diploma and a certificate documenting a student's experience with a particular work skill. Consistent with systemic reform, programs funded by STWOA had to be linked to the state's educational standards. Like the Goals 2000 grants, the STWOA grants were frequently used by states to fund initiatives that were under way or areas of need that had been previously identified.<sup>134</sup>

The 1994 elections, marked by the proposed new "Contract for America," put Republicans in control of both houses of Congress for the first time since the 1950s. The 1995 session brought many efforts to eliminate Goals 2000—or to defund certain portions of it—and reduce the overall federal funding of education. Most of these attempts failed because of both vigorous opposition by education constituents and, in large part, presidential vetoes. Another force also played a role in the continuation of Goals 2000: the business coalition that had supported the legislation's agenda and federal standards setting. Initially involved by the first President Bush, such national business organizations as the Business Roundtable, U.S. Chamber of Commerce, National Alliance for Business, Hispanic Chamber of Commerce, and National Association of Manufacturers formed the Business Coalition for Education Reform, which served to moderate the repeal efforts and keep systemic reform and accountability in the minds of legislators. In 1996, these leaders would convene another summit with governors in Palisades, New York (only about 40 percent of the governors attended this time), and renew their call for standards, assessments, and technology. This summit, which included a large number of education leaders committed to standards-based reform, helped to keep the standards movement alive in many states.

By the mid-1990s, federal pressure to spur state and local accountability in student achievement was widely accepted. Indeed, the states responded quickly to more stringent federal expectations for measurable performance. In many cases, they had already begun to adopt some of the same reforms on their own. In New York, for example, the state Regents built on their long-standing practice of aligning curriculum standards and assessments—setting higher learning standards, revising the state's assessment system, and building the capacity of local schools to support high student achievement. In 1996, as part of this effort, the Regents approved new learning standards to be phased in gradually: all students graduating from high school would be required to pass state Regents exams in English, math, global history, U.S. history, and natural science.

Requiring students to pass standardized exams before graduating or progressing from grade to grade—a practice known as "high-stakes" testing, which had been used in some states for quite some time—gained momentum in the 1990s. For example, the state supreme court in Massachusetts upheld the use of the Massachusetts Comprehensive Assessment System (MCAS) as a graduation test. According to the court, barring the state from using the test as a graduation

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<sup>134</sup> For a full review of the implementation of the School-to-Work Opportunities Act, see Janet L. Kroll, "Learning to Do: An Analysis of the School-to-Work Opportunities Act of 1994" (Unpublished Ph.D. dissertation, University of Pennsylvania, 2002).

requirement would “undermine educator accountability and hinder education reform.”<sup>135</sup> Earlier attempts to make graduation contingent on the passage of a statewide test had fallen on the grounds that the tests bore little or no relation to the specific curriculum or subject matter that students encountered in the classroom. However, systemic reforms in general, and the MCAS in particular, fulfilled this expectation because their contents were tied directly to state-mandated content standards.

The concept of “opportunity-to-learn” (OTL) and OTL standards became a major issue as state and local governments began to test more and use the results for decisions that made a high impact on the lives of students and teachers. As states increasingly used tests to determine eligibility for promotion and graduation, some groups began to advocate for OTL standards as the appropriate measures of what students should be expected to achieve. How could students be expected to test well if they had not been taught the content to be tested? States and localities did not normally have OTL standards, because they were concerned that the practice would leave states open to a flood of lawsuits and prove prohibitively expensive in many cases. The concerns on this issue led eventually to major court cases for “equity” based on “adequacy.”

Using education as a major campaign issue, Clinton won his second term in 1996, beating Senator Robert Dole (who had supported most of Clinton’s education proposals in the first term). He campaigned against Republican efforts to close the Department of Education and transfer money from public schools to individual vouchers. This election was the last time that the Republican Party would call for reduced public school funding. Republicans lost votes both with the business community that had supported the reforms and with the large numbers of voters. In his first State of the Union address after his re-election, Clinton proposed detailed educational plans—voluntary national tests in fourth-grade reading and eighth-grade math, tutoring, after-school programs, and funding of 100,000 new teachers to shrink class size.

Following the election, conservatives fought against national testing, believing that it gave too much control to the federal government (though the first President Bush had proposed a similar measure just a few years earlier). Republicans were looking to take education as an election issue in 1998 and 2000, and while they supported budgets with more and more funding for education, they opposed many of the standards and testing provisions that provided accountability in return for more funding. The Department of Education, hesitant to battle states at the same time that pressure was building in Congress to dismantle IASA and Goals 2000, generally certified state submissions of compliance with IASA or gave states more time to comply. Due to the rejection of NESIC by Congress, there was no appropriate body to evaluate standards, so if states followed the proper process for meeting the requirements of IASA, they were certified. However, by 2000, only seventeen states were in full compliance with IASA, which had been enacted six years earlier.

In 1997, Congress reauthorized the Individuals with Disabilities Education Act, the Vocational Education Act, and the Higher Education Act while passing a Comprehensive School Reform Program, a Reading Excellence Act, and a class-size reduction program. In response to this legislation—and in an effort to ensure their ongoing eligibility for federal aid—states have continued to bolster their requirements for academic performance. In many respects, the states

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<sup>135</sup> Megan Tench, “Students’ Legal Bid vs. MCAS Rebuffed,” *Boston Globe*, 28 January 2004.

themselves (often with the help of business leaders) have become the trailblazers in the standards and accountability movement. As policy analyst Paul Hill has noted, “The states, localities, and the private sector are now the sources of most new ideas and practices—tutoring programs, student learning standards, performance-based school accountability, new teacher accreditation practices, investments in new school designs, etc.”<sup>136</sup>

In 1998, keeping with the theme of state-business cooperation in school reform, President Clinton signed the Workforce Investment Act (P.L. 105-220), which paid for “(A) tutoring, study skills training, and instruction, leading to completion of secondary school, including dropout prevention strategies; (B) alternative secondary school services, as appropriate; (C) summer employment opportunities that are directly linked to academic and occupational learning; (D) as appropriate, paid and unpaid work experiences, including internships and job shadowing; (E) occupational skill training, as appropriate; (F) leadership development opportunities, which may include community service and peer-centered activities encouraging responsibility and other positive social behaviors during non-school hours, as appropriate; (G) supportive services; (H) adult mentoring for the period of participation and a subsequent period, for a total of not less than 12 months; (I) followup services for not less than 12 months after the completion of participation, as appropriate; and (J) comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral, as appropriate.”<sup>137</sup> This law, which complemented the School-to-Work Opportunities Act, built on the school-business partnerships that had begun in the mid- to late 1970s. Together with the funds that it made available to schools, the Workforce Investment Act also made workforce development a central part of program development in some inner-city schools. (The idea of federal aid to foster workforce development among disadvantaged students had been around since the early twentieth century and had played a key role in many of the most popular federal aid programs, including the Vocational Education Act of 1917, the Vocational Rehabilitation Act after World War I, and the G.I. Bill after World War II.)

By the late 1990s, dozens of private organizations and think tanks had begun to assume leadership in the dissemination of school-reform ideas. Among these new groups were the Center for Educational Innovation-Public Education Association, which supports smaller class sizes and “effective schools” reforms; the Council on Basic Education, which emphasizes basic skills and instructional improvements in its advocacy for curricular reform; the Manhattan Institute’s Center for Civic Innovation and Education Reform, a research organization committed to voucher plans and led by Chester Finn, former assistant secretary of education in the Reagan administration ; and, representing the opposite end of the political spectrum, the Education Trust and the Twenty-First Century Schools Project of the Progressive Policy Institute, associated with the Democratic Leadership Council.

In the absence of any federal agency to approve or compare state standards, a number of organizations also entered the business of rating state standards. The American Federation of Teachers, the Council for Basic Education, and the Fordham Foundation, among others, have published periodic reviews of state standards. Achieve, an organization created by a coalition of

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<sup>136</sup> See Hill.

<sup>137</sup> For the full text of the Workforce Investment Act of 1998, see <http://www.doleta.gov/usworkforce/wia/wialaw.txt>.

state governors and top corporate executives following the Palisades summit, analyzes state standards and their alignment with state assessments; it is also committed to creating assessments for multi-state use.

Other groups that emerged in the 1990s sponsored “systemic” reform initiatives and expressed their willingness to assume control of individual schools, even whole school systems. These groups included the Coalition of Essential Schools—which originated at Brown University under the leadership of Ted Sizer, former dean of the Harvard Graduate School of Education—and the Edison Project, led by business entrepreneur Christopher Whittle and former Yale president Benno Schmidt. Many of these groups, both liberal and conservative, supported “high-stakes” testing and accountability systems, but others opposed these trends. For example, Fair Test in Cambridge, Massachusetts, together with the Coalition for Authentic Reform in Education, lobbied against the use of standardized tests for graduation or grade-promotion purposes. Asserting that a greater use of tests was not a “reform” in itself, these groups try to pinpoint specific aspects of schooling that might improve academic achievement among disadvantaged youth (aspects such as more parental involvement, more professional development for teachers, more technology in classrooms, smaller class sizes, higher teacher salaries, better discipline, safer schools, more creative and individualized curricula, etc.).

A number of university-based research institutes emerged in the 1980s and 1990s to contribute to contemporary policy debates in education. They include the Center for Educational Policy Analysis at Rutgers; the Education Policy Studies Laboratory at Arizona State University; the Institute for Education and Social Policy at New York University; and the Consortium for Policy Research in Education (CPRE), which is based at the University of Pennsylvania and draws on scholars at Harvard, Stanford, the University of Wisconsin, and the University of Michigan. Other organizations involved in the work of school reform include the Alliance for Excellent Education, the American Youth Policy Forum, the Center for Collaborative Education, the Education Trust, the Education Policy Institute, and the Learning First Alliance.

Some organizations, such as the Center on Education Policy (under the direction of Jack Jennings), attempt to steer clear of ideological advocacy, while others—such as the Heritage Foundation, the American Enterprise Institute, and the Cato Institute—take conservative positions. This growth in research and advocacy groups has added diverse views on school reform.<sup>138</sup> The array of advocates around various federal education issues illustrates the increasing importance of federal policy in dealing with some of the nation’s most contentious social concerns.

Although Republicans blocked many of Clinton’s initiatives in his second term, education appropriations rose 38 percent (to more than \$33 billion) between 1996 and 1999, with Republicans—who sometimes took credit for granting even more money than the president had requested—joining congressional Democrats, who traditionally supported increases. With thirty-two of the fifty governorships held by Republicans, the majority in Congress was happy to appropriate additional money for education. In the final year of the Clinton administration, education appropriations went up 15 percent, or \$6.5 billion.

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<sup>138</sup> See, for example, Paul E. Peterson and Barry G. Rabe, “The Role of Interest Groups in the Formation of Educational Policy: Past Practice and Future Trends,” *Teachers College Record* (Spring 1983), 708-729.



The Clinton legacy—including IASA, Goals 2000, and standards-based systemic reform—changed the face of federal education policy. The fundamental ideas informed the reauthorization of not only the ESEA but also the Higher Education Act and the Individuals with Disabilities Education Act. All of these now require that schools and teachers serve in a standards-based environment with challenging standards and curricula for all students. If this shift did not immediately achieve Clinton’s goal of equalizing opportunity and raising achievement for all, it would most certainly impact the educational efforts of his successor.

## ***The George W. Bush Years***

The 2000 presidential election between George W. Bush and Vice President Al Gore was extremely close, with Gore winning the popular vote and Bush the Electoral College vote—and the presidency—only after the U.S. Supreme Court decision regarding the Florida outcome. Though education was a key issue in the election campaign, it was a surprise to the Congress and the country that three days after President Bush’s inauguration in January 2001, his first legislative proposal was the No Child Left Behind Act (NCLB). The proposal was advanced to the Republican-controlled House and Senate as a 25-page concept paper, with an invitation to Congress to join the administration in writing the bill together.

The proposed act incorporated new provisions into the reauthorization of the Elementary and Secondary Education Act, which had been last reauthorized as the Improving America’s Schools Act of 1994 (IASA). NCLB was to become a huge bill of some 1,100 pages, which carried forward Title I, the 21<sup>st</sup> Century Schools Act, bilingual education, Title II grants for innovation, a major reading program, and other programs with long standing under IASA and ESEA. The signature provisions that were ultimately included in NCLB advanced the strategy, begun with Goals 2000, of federal support for improving achievement through standards, assessments, and specific requirements of accountability. NCLB built directly on the IASA requirements that standards and assessments in each state must be the same for all students, with accountability requirements that states and districts take corrective action on schools “in need of improvement.” During the year that the legislation was being shaped, the president and congressional leaders created a new, highly specific

### **Political Snapshot**

**President:** George W. Bush (R) 2001 – 2004 First Term  
Secretary of Education: Roderick Paige

#### **Major education actions:**

- 2001 – No Child Left Behind Act (reauthorization of ESEA)
- 2001 – English Language Acquisition Act (part of NCLB)
- 2002 – Richard B. Russell National School Lunch Act of 1946, amended [Note 6]
- 2002 – Education Sciences Reform Act [Note 2]
- 2003 – Education of the Blind Act
- 2004 – Individuals with Disabilities Education Improvement Act

#### **107th Congress (2001-2002)**

**SENATE: 50-Rep, 50-Dem, January 20-June 6, 2001**

Vice-President: Richard Cheney (R)  
Majority Leader: Trent Lott (R-MS)  
Minority Leader: Thomas A. Daschle (D-SD)  
Committee: Health, Education, Labor and Pensions  
Chair: James M. Jeffords (R-VT)  
Ranking Minority Member: Edward M. Kennedy (D-MA)

**SENATE: 50-Dem, 49-Rep, 1-Ind, June 6, 2001-November 2002**

Vice-President: Richard Cheney (R)  
Majority Leader: Thomas A. Daschle (D-SD)  
Minority Leader: Trent Lott (R-MS)  
Committee: Health, Education, Labor and Pensions  
Chair: Edward M. Kennedy (D-MA)  
Ranking Minority Member: James M. Jeffords (I-VT)

**HOUSE: 221-Rep, 212-Dem, 2-Other**

Speaker: J. Dennis Hastert (R-IL)  
Majority Leader: Richard K. Armey (R-TX)  
Minority Leader: Richard A. Gephardt (D-MO)  
Committee: Committee on Education and the Workforce  
Chair: John Boehner (R-OH)  
Ranking Minority Member: George Miller (D-CA)

#### **108th Congress (2003-2004)**

**SENATE: 51-Rep, 48-Dem, 1-Ind.**

Vice-President: Richard Cheney (R)  
Majority Leader: William H. Frist (R-TN)  
Minority Leader: Thomas A. Daschle (D-SD)  
Committee: Health, Education, Labor and Pensions  
Chair: Judd Gregg (R-NH)  
Ranking Minority Member: Edward M. Kennedy (D-MA)

**HOUSE: 229-Rep, 204-Dem, 1-Other**

Speaker: J. Dennis Hastert (R-IL)  
Majority Leader: Thomas DeLay (R-TX)  
Minority Leader: Nancy Pelosi (D-CA)  
Committee: Committee on Education and the Workforce  
Chair: John Boehner (R-OH)  
Ranking Minority Member: George Miller (D-CA)

metric to assess annual progress for all elementary and secondary schools and to determine which schools, districts, and states would be sanctioned for failure to meet progress targets. The formula had three elements: (1) By the year 2014, all students must be performing in reading, mathematics, and science at the “proficient” level; (2) in each school each year, student “adequate yearly progress” must increase at such a rate that 100% proficiency would be met by 2014; and (3) the annual rate of progress applies not only to the aggregate student enrollment of a school, district, or state but also to “disaggregated” groups of students according to income, race, gender, English language ability, and special education status. If any of the groups are below expected progress rates, the entire school is considered “failing” and in need of improvement to be realized through presidential sanctions.

NCLB outlines the following sanctions for schools that do not meet their state-defined adequate yearly progress (AYP):

- A Title I school that has not achieved AYP for two consecutive school years will be identified by the district (before the beginning of the next school year) as *needing improvement*. School officials will develop a two-year plan to turn around the school. The local education agency will ensure that the school receives needed technical assistance as it develops and implements its improvement plan. Students have the option of transferring to another public school in the district—which may include a public charter school—that has not been identified as needing improvement.
- If the school does not make AYP for a third consecutive year, it remains in school-improvement status, and the district must continue to offer public-school choice to all students. In addition, students from low-income families are eligible to receive Title I – funded supplemental services, such as tutoring or remedial classes, from a state-approved provider, either public or private.
- If the school fails to make adequate progress for a fourth year, the district must implement certain *corrective actions* to improve the school, such as replacing certain staff or implementing a new curriculum, while continuing to offer public-school choice and supplemental educational services for low-income students.
- If the school fails for a fifth year, the district must initiate plans for *restructuring* the school. This may include reopening the school as a charter school, replacing all or most

**Political Snapshot**

**President: George W. Bush (R) 2005 – 2008 Second Term**  
Secretary of Education: Margaret Spellings

**Major education actions:**

- 2006 – Carl D. Perkins Career and Technical Education Improvement Act (P.L. 109-270)
- 2007 – America Competes Act; P.L. 110-69
- 2007 – Improving Head Start for School Readiness Act (P.L. 110-134)

**109th Congress (2005-2006)**

**SENATE: 55-Rep, 44-Dem, 1-Ind.**

- Vice-President: Richard Cheney (R)
- Majority Leader: William H. Frist (R-TN)
- Minority Leader: Harry M. Reid (D-NV)
- Committee: Health, Education, Labor and Pensions
- Chair: Mike Enzi (R-WY)
- Ranking Minority Member: Edward Kennedy (D-MA)

**HOUSE: 232-Rep, 202-Dem, 1-Other**

- Speaker: J. Dennis Hastert (R-IL)
- Majority Leader: Thomas DeLay (R-TX)
- Minority Leader: Nancy Pelosi (D-CA)
- Committee: Committee on Education and the Workforce
- Chair: John Boehner (R-OH)
- Ranking Minority Member: George Miller (D-CA)

**110th Congress (2007-2008)**

**SENATE: 49-Rep, 49-Dem, 2-Ind.**

- Vice-President: Richard Cheney (R)
- Majority Leader: Harry M. Reid (D-NV)
- Minority Leader: Mitch McConnell (R-KY)
- Committee: Health, Education, Labor and Pensions
- Chair: Edward Kennedy (D-MA)
- Ranking Minority Member: Mike Enzi (R-WY)

**HOUSE: 233-Rep, 202-Dem**

- Speaker: Nancy Pelosi (D-CA)
- Majority Leader: Steny Hoyer (D-MD)
- Minority Leader: John Boehner (R-OH)
- Committee: Committee on Education and the Workforce
- Chair: George Miller (D-CA)
- Ranking Minority Member: Howard M. (Buck) McKeon (R-CA)

of the school staff, or turning over school operations either to the state or to a private company with a demonstrated record of effectiveness.<sup>139</sup>

In addition, NCLB requires states to calculate AYP for whole districts. An unspecified corrective action plan is prescribed for those districts that do not make AYP for two consecutive years.

Given that any school or district can fail to make its AYP goals because of the performance of one subgroup, these sanctions had a widespread impact within three years after enactment. Many schools have been required to allow students to transfer. However, as this requirement is limited to within-district transfers, the options for many students have in reality been constrained. Often other schools in the district have received similar sanctions and, therefore, are not able to accept transfers; those schools that are sanction-free frequently do not have empty seats available for transfers from failing schools.

When coupled with one of the law's best-known requirements—that all states test all students in grades three through eight annually in reading, mathematics, and science as the basis for measuring “adequate yearly progress”—these AYP provisions are at the source of the controversy about the implementation of NCLB, which has grown significantly since its enactment. In contrast, by 2005 many other provisions of the act were being implemented without controversy as continuations of established ESEA programs.

The final provisions of NCLB took the Congress and administration a year to finalize. As noted earlier, President Bush initially presented his proposal to Republican majorities of both the Senate and House. In June 2001, however, Senator Jim Jeffords, a Republican from Vermont, changed his affiliation to Independent and joined the Democrats in organizing a new Senate majority. Jeffords had been chair of the Senate committee with jurisdiction over education, but the new chair was Senator Edward Kennedy from Massachusetts. From that point on, the legislation had to be developed on a bipartisan basis, requiring resolution of highly complex political positions. There were two groups of Democrats, referred to as “new” and “old,” and two groups of Republicans, moderates and conservatives (with views carried over from the Contract for America of 1995).

Agreement on the bill was reached because the president persuaded his party of the need to establish Republican leadership in education, where Democrats had generally held that reputation. A major bill would provide a sound Republican plank for the election platforms of 2002 and 2004. The emphasis on accountability overrode the conservatives' dislike of federal intervention and more spending. Democrats, many of whom at first resisted efforts to help the president with an “education win,” chose to cooperate for three reasons. (1) The bill was based on the concepts of their own legislation, IASA and ESEA. (2) The president strongly threatened to scuttle the ESEA reauthorization and cut education funds if there was no new federal initiative. Democrats saw this bill as the only way to persuade the administration to increase federal education appropriations. (3) In the Senate, “old” Democrats knew that some “new” Democrats were prepared to join the Republicans to pass a reform package that would have included vouchers for private school students and, therefore, made the bill appear as a complete Republican victory. The “old” Democrats, therefore, took control of negotiations with the

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<sup>139</sup> Taken from the <http://www.ed.gov/nclb/accountability/schools/accountability.html>. Accessed 31 July 2005.

president and held the overall party position together by working aggressively with their House counterparts, eventually realizing a bipartisan reform bill focused particularly on low-achieving students, but without vouchers. In the end, both parties, even with grave doubts about many provisions, had stronger reasons—both substantive and political—to support NCLB than to oppose it. After protracted negotiations, Congress enacted the No Child Left Behind Act (P.L. 107-110, a reauthorization of the ESEA) with strong, bipartisan support: it passed in the House on a vote of 381 to 41 and in the Senate on a vote of 87 to 10.<sup>140</sup>

In the struggle to enact NCLB, the stakes were extremely high for education, business, state and local governance, and legislative organizations and think tanks with various ideologies. Supporters of the No Child Left Behind Act included the Business Coalition for Excellence in Education, a group Bush deliberately involved in the planning of the new law, as well as the Education Trust, an organization originally formed to involve colleges and universities in K-12 education reform. Two education associations, the American Federation of Teachers (AFT) and the Council of Chief State School Officers (CCSSO), worked closely with the administration and Congress in support of the bill. Both supported standards-based reform and had worked to enact Goals 2000 and IASA. CCSSO advocated strongly for the authority of the state education agencies to administer the NCLB provisions, but it disagreed with the requirements for every-grade testing and the rigid provisions for 100% “proficiency” performance and AYP.

Most education interest groups, however, voiced opposition to NCLB. These opponents included the National School Boards Association, the American Association of School Administrators, the National Education Association, and the National Conference of State Legislatures. They claimed that the high cost of meeting the law’s demands, combined with the low level of federal aid included in the law, would create a financial crisis for state and local education agencies. Indeed, within two years of the law’s passage, schools in eastern Pennsylvania sued the federal government, saying that the law was poorly funded. In addition, the National Education Association insisted that states give all parents the right to exempt their children from state-mandated tests. The Bush administration continued to maintain, however, that the NCLB’s strict accountability and assessment provisions were the only way to ensure equal educational opportunities for the nation’s most disadvantaged students—implying that, without federally mandated testing, states would continue to leave poor, minority, handicapped, and otherwise disadvantaged students “behind.”<sup>141</sup>

In addition to the design and passage of NCLB, education research—one of the original and most underutilized areas of federal education effort—achieved a new prominence with the passage of the Education Sciences Reform Act of 2002. As part of this legislation, Bush transformed the Office of Educational Research and Improvement into the Institute for Educational Sciences (IES), an agency on the same level as the National Science Foundation. Headed initially by Grover (Russ) Whitehurst, IES promotes “scientifically based research” in education and the use

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<sup>140</sup> Patrick McGuinn, “The National Schoolmarm: No Child Left Behind and the New Educational Federalism,” in *Publius* 35, no. 1 (Winter 2005): 41-68.

<sup>141</sup> Some states, such as Arizona and Vermont, threatened to forgo all federal aid rather than give in to the testing regime imposed by the No Child Left Behind Act. Other states, including New Jersey and Virginia, threatened to repeal some of their own state-mandated tests. See James Traub, “The Test Mess,” *New York Times*, 7 April 2002. See also Paul Manna, “Leaving No Child Behind,” in *Cross*, 126-143.

of its findings to identify a menu of educational improvement programs from which schools and districts may select. The agency developed the What Works Clearinghouse as a resource “to promote informed education decision making through a set of easily accessible databases and user-friendly reports that provide education consumers with ongoing, high-quality reviews of the effectiveness of replicable educational interventions (programs, products, practices, and policies) that intend to improve student outcomes.”<sup>142</sup>

Even with the additional support that the federal government was trying to provide, the key question for the future was whether all schools would have sufficient resources to help students succeed on the tests. NCLB attempted to address this issue with several measures. In one measure, it allowed states to shift resources from non-Title I federal programs into the Title I budget to help pupils achieve AYP. A separate law, the State and Local Flexibility Demonstration Act, permitted states to transfer administrative and activity funds from other ESEA programs to supplement learning programs (for up to five years at a time), so long as students continued to meet AYP goals. Finally, like previous federal legislation, NCLB targeted aid at the neediest schools, particularly those in urban areas, and increased the total allocation for Title I by 20 percent. This boost in aid was welcome, but it was not enough to quell complaints that the NCLB was yet another unfunded federal mandate.

These complaints have now reached the courts: school districts in several states, as well as the National Education Association, have initiated lawsuits against the federal government over the unfunded-mandate issue. The state of Connecticut has challenged the legality of No Child Left Behind, claiming that it will cost the state millions of dollars per year but limits states from spending state money to implement federal requirements. While other states, such as Utah and Virginia, have considered forgoing their federal education funds to avoid the NCLB requirements, Connecticut is the first to pursue the validity of the law through the courts.<sup>143</sup>

In general, President Bush concentrated the administration’s objectives for NCLB on student testing, school accountability, and a new reading initiative. Throughout the congressional negotiations, the administration refused to compromise on one item in particular: the requirement that all students in grades three through eight take annual standardized tests (developed by the states). Bush knew that a majority of Americans had come to see testing as a way to promote fiscal accountability as well as educational excellence and equity in education. Only when all students, even those from the most disadvantaged backgrounds, could demonstrate the same level of achievement on the same tests would the public come to believe that true “equity” or “equal educational opportunities” existed in the public schools. Many states, in most cases supported by Goals 2000 funds, had already designed testing regimes, which may or may not have matched NCLB’s requirement that all students in grades three through eight be tested every year in English, mathematics, and eventually science. Testing systems that relied on sampling students rather than testing every student, or those that used benchmark tests in certain grades, had to be redesigned or supplemented to comply with the new law.

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<sup>142</sup> Taken from the What Works Clearinghouse website, <http://www.whatworks.ed.gov/howeare/overview.html>. Accessed July 31, 2005.

<sup>143</sup> Robert Frahm, “Lawmakers Support Federal Lawsuit,” *Hartford Courant*, 30 June 2005, B1.

Key testing provisions in NCLB had been operating in Texas when George W. Bush was governor of that state. By 2001 forty-nine states had started to set content standards and mandate tests for graduation and grade promotion (though state tests were not necessarily aligned with local curricula in a “systemic” way). However, relying on states to set their own standards led to widely varying definitions of “proficiency” in different states. As Lorrie Shepard noted in 2002, “In Colorado, many legislators are aware that Governor Owens intended to create a testing system like the one in Texas. They do not know, however, that Colorado proficiency standards were set at the 50<sup>th</sup> to the 90<sup>th</sup> percentile (across different subject areas), whereas in Texas they were set at the 25<sup>th</sup> percentile in reading and the 44<sup>th</sup> percentile in mathematics. It is not surprising, then, that Texas has very high ‘passing’ rates on the TAAS [Texas Assessment of Academic Skills].”<sup>144</sup>

Implementation of NCLB was getting under way when the nation was devastated by the September 11, 2001, attacks on the World Trade Center and the Pentagon. That adversity shifted the nation’s, and particularly the federal government’s, focus to safety and defense in the face of U.S. vulnerability to global terrorism. From that date to the time of this writing in early 2006, controversies over the dramatic increase in federal oversight and intervention under NCLB, which would likely have sustained a high profile for the act in Congress and the administration, have been subordinated to fundamental issues of security.

Nevertheless, as states and localities have administered NCLB, the effects have reached nearly every public school classroom in the nation. The impacts of the new testing requirements, and their fit or conflict with existing state assessment systems; the new reading and math “proficiency” targets, previously untested by any large-scale systems; the new provisions for reporting performance by subgroups of students, with myriad issues about who should be tested and how large subgroups must be to assure the validity of results; and other issues have generated intense reactions at the school, district, state, and national levels. Only after the initial year of implementation did educators and the public develop a broad understanding of the extent to which federal education policy had intervened in school practice. As noted earlier, some states have contested or are contesting NCLB provisions in the courts. In other cases, technical issues of calculating and reporting AYP have been brought to the U.S. Education Department for clarity or relief. Examples of NCLB controversies related to state and federal policies follow.

One challenge involves alternatives for measuring AYP. Some states require equal annual incremental increases; others allow for smaller or no increases in the early years of their programs, with much larger increases expected in later years. Some states measure progress by assessing the “value added” from the beginning to the end of the school year with each group of students; others measure it by comparing one grade level score with the same grade level score (and therefore different students) the following year. These varying methods of establishing AYP—together with the different standards for proficiency among states—mean that the proportion of schools identified for improvement varies considerably from state to state.

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<sup>144</sup> Lorrie A. Shepard, “The Contest Between Large-Scale Accountability Testing and Assessment in the Service of Learning, 1970-2001” (Unpublished paper, 2002). See also Margaret E. Goertz, “The Federal Role in an Era of Standards-Based Reform,” in Center on Education Policy, *The Future of the Federal Role in Elementary and Secondary Education* (Washington, D.C.: Center on Education Policy, 2001) and F. M. Hess, “Reform, Resistance . . . Retreat? The Predictable Policies of Accountability in Virginia,” in Diane Ravitch, ed., *Brookings Papers on Educational Policy* (Washington, D.C.: Brookings Institution, 2002).

Another challenge is the inclusion of English language learners in the accountability system. An effort to require all students to take classes in English, begun during the first Bush administration, gained momentum under George W. Bush. In 1998, voters in California approved Proposition 227, which dismantled the state's bilingual program and replaced it with a strict English-Only program. Two years later, California entrepreneur Ronald Unz sponsored a similar ballot initiative in Massachusetts (which in 1971 had been the first state in America to *mandate* bilingual education for non-English-speakers). Voters in Massachusetts replaced the three-year "bilingual-transitional" programs with one-year English-immersion programs, and Unz's initiative passed with 70 percent of the vote (including large majorities in Boston's immigrant neighborhoods).

In 2001, Congress replaced the federal Bilingual Education Act with a new English Language Acquisition Act, which required limited-English-proficient students to take tests in English after they had been in the United States for three years. (Under NCLB, the U.S. Department of Education permitted schools to exempt immigrants from standardized testing until they have been in the country for one year.) The perception that English-immersion programs would be more efficacious in achieving this goal spurred their adoption in many local districts. It remains to be seen, however, whether the federal courts will accept English immersion as a way to meet the legal standard of meaningful, appropriate, or "adequate" education for limited-English-proficient students.<sup>145</sup> When considering this issue, courts will have to deal with what level of academic achievement demonstrated educational adequacy in the public schools.<sup>146</sup>

The implementation of NCLB generates similar problems for students with disabilities—who may not be able to perform at the same level, or achieve at the same rate, as the state systems require of their peers. Though the administration accepted few early accommodations on this issue, it has agreed to more compromise in President Bush's second term.

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<sup>145</sup> The court began to consider this issue in the 1980s. For a thorough discussion of the legal intricacies of this and other bilingual-education cases, see James J. Lyons, *Legal Responsibilities of Education Agencies Serving National Origin Language Minority Students* (Chevy Chase, Md.: The Mid-Atlantic Equity Center, 1992). See also *Cintron v. Brentwood Union Free School District* 455 F. Supp. 57 (Tenth Circuit, 1978); *Rios v. Reed* 480 F. Supp. 14 (Eastern District, N.Y., 1978); *Guadalupe Organization v. Tempe Elementary School District No. 3* 587 F. 2d. 1022 (Ninth Circuit, 1978). See also *Castaneda v. Pickard* 648 F. 2d. 989 (Fifth Circuit, 1981). In this case, the court ruled that "if a school's program . . . fails . . . to produce results indicating that the language barriers confronting students are actually being overcome, that program may, at that point, no longer constitute appropriate action." See also the language used in the remedy phase of *Keyes v. Denver School District No. 1* 576 F. Supp. 503 (D. Colorado, 1983). "The defendant [the Denver public schools] considers *Lau* children to be bilingual, presumably with equal proficiency in English and another language. That view disregards the other element of the applicable definition in the Colorado Language Proficiency Act that the English language development and comprehension of such bilingual students is at or below the district mean or below an acceptable proficiency level on a national standardized test or a test developed by the Colorado Department of Education." In other words, education for non-English-speaking children was considered to be meaningful or appropriate only when it helped them score *above* "the district mean" or "an acceptable proficiency level" on a national standardized test, or on a test developed by the state department of education.

<sup>146</sup> See Bradley Scott, "The Fourth Generation of Desegregation and Civil Rights," in *Civil Rights in Education: Revisiting the Lau Decision* (San Antonio: Intercultural Development Research Association, 1995). See also U.S. Commission on Civil Rights, *Equal Educational Opportunity and Nondiscrimination for Students with Limited English Proficiency: Federal Enforcement of Title VI and Lau v. Nichols* (Washington, D.C.: U.S. Government Printing Office, 1997), 131-162.

When Margaret Spellings, President Bush's former education advisor in Texas and a leader of his first-term Domestic Policy Council, took office as secretary of education in early 2005, she indicated a greater willingness to work with states in creating a "commonsense approach" to NCLB. That may include greater flexibility in testing English language learners and students with disabilities, as well as changes in methods of calculating AYP. However, the administration indicated that annual testing, reporting of disaggregated data, improvement in teacher quality, and dissemination of school information and options to parents would not be compromised.

While NCLB implementation held a high profile in some states and localities, the opposite was true in Washington. Congress held few hearings on the issues, and neither the two parties nor the administration wanted the law opened to amendments. Congress deflected state and local concerns to the U.S. Department of Education for "administrative" resolution.

Democratic and Republican leaders have periodically reiterated their commitment to the basic structure of the law. Senator Ted Kennedy (D- MA), an early proponent of the law who was a leader in securing its passage, proposed bills in 2004 that would give districts and states more flexibility. In doing so, he stated that "it's important to acknowledge what this bill does not do. It does not make fundamental changes to the requirements under No Child Left Behind. Those reforms are essential to improving our public schools."<sup>147</sup>

In the presidential election of 2004, President George Bush defeated Senator John Kerry of Massachusetts. Neither NCLB nor any other education policies were prominent in the campaign. Kerry had voted for NCLB and gained no traction on any education policies that he tried to contrast with those of the president. NCLB provided an education record that supported the president, and congressional Republicans, in an election focused overwhelmingly on the war in Iraq.

During 2005, the U.S. Department of Education expanded efforts to work with states on incremental adjustments to implementing NCLB. Increased numbers of schools were identified as failing and in need of improvement on the path to 100% proficiency in 2014. No changes were made in the law.

After four years of NCLB implementation, several large questions began to shape preparation for the next reauthorization of NCLB-ESEA, which was due in 2007 but was not undertaken by Congress before the end of the Bush Administration. Is this major federal education strategy, which focuses on standards, assessments, and accountability, succeeding? Is student performance rising, are the schools better, and will 100% proficiency be achieved by 2014? If there have been unintended negative consequences of NCLB, what are they, and how can they be remedied? If the overall strategy needs revision, what midcourse corrections are needed, and how might the administration, Congress, states, and localities shape them?

The No Child Left Behind Act marks the end of a five-decade period of federal initiatives in elementary and secondary education. That period provides an appropriate frame in which to analyze how federal policy has developed and the context for its development. A central question

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<sup>147</sup> Erick Robelen, "Kennedy Bill Would Give States, Districts Leeway," *Education Week*, 22 September 2004, as quoted in McGuinn.



is how and why the federal influence has grown so dramatically in a nation whose constitution makes no reference to responsibility for education and whose practices of decentralized control of education have been presumed dominant. Any analysis of these issues will be well served, especially, by assembling the record of state efforts to influence the changes over the last 50 years. A robust historical record will be a significant resource for those who shape federal policy, including NCLB and its successors, in a new context of international competition and strife, which is forcing the United States to take a fresh look at its “federal”—local, state, and national—approach to many functions, especially education.

## The Obama Years

*This addendum (November, 2009) is a brief summary of educational policymaking in the first ten months of the administration of President Barack Obama. It is not intended as an in-depth analysis of state-federal interaction in education policy in the manner of the previous chapters.*

While much of the public attention in the first year of the Obama Administration has been on economic recovery and health care reform, significant education policy efforts have been initiated by the administration and Congress. Education spending was a major focus within the economic stimulus bill, entitled the American Recovery and Reinvestment Act.

The act appropriated over \$40 billion in stabilization aid to state governments to alleviate budget shortfalls, as well as additional funds through IDEA and Title I of ESEA.<sup>148</sup> The stabilization aid is meant to fund short-term programs, as the funding will not be available past the 2011 fiscal year, but some states have replaced some of their own educational appropriations with federal funds, leading some to worry that state education funding could decrease sharply when stabilization aid ends.<sup>149</sup>

In addition, the administration has tied further state stimulus aid to a federal education reform agenda. This includes the Race to the Top Fund, a \$4.35 billion competitive grant program that requires states that apply for the funds to submit a plan addressing four education reform goals, including the use of internationally-benchmarked standards and assessments, the recruitment and retention of effective teachers and principals, the adoption of data systems to track student progress, and the improvement of low-performing schools. In addition, states must remove any statutory barriers to using data about student achievement to assess the performance of teachers

### Political Snapshot

**President:** Barack H. Obama (D) 2009 – present  
Secretary of Education: Arne Duncan

**Major education actions:**  
2009 – American Recovery and Reinvestment Act (P.L. 111-5)

#### 111th Congress (2009-2010)

**SENATE: 56-Rep, 41-Dem. 2-Ind (caucused with Dem)**

Vice-President: Joseph Biden (D)  
Majority Leader: Harry M. Reid (D-NV)  
Minority Leader: Mitch McConnell (R-KY)  
Committee: Health, Education, Labor and Pensions (HELP)  
Chair: Edward M. Kennedy (D-MA), died August 25, 2009  
Tom Harkin (D-IA)  
Ranking Minority Member: Mike Enzi (R-WY)

**HOUSE: 228-Rep, 206-Dem, 1-Other**

Speaker: Nancy Pelosi (D-CA)  
Majority Leader: Steny Hoyer (D-MD)  
Minority Leader: John Boehner (R-OH)  
Committee: Committee on Education and the Workforce  
Chair: George Miller (D-CA)  
Ranking Minority Member: Howard M. (Buck) McKeon (R-CA)

<sup>148</sup> “The American Recovery and Reinvestment Act of 2009: Saving and Creating Jobs and Reforming Education.” <http://www.ed.gov/policy/gen/leg/recovery/implementation.html>. Accessed 16 October 2009.

<sup>149</sup> Alyson Klein. “States feeling fiscal squeeze despite stimulus.” *Education Week* 16 October 2009

and administrators, and must remove limits to the number of charter schools allowed in the state.<sup>150</sup>

The administration has also identified teacher quality as a major component in working toward educational equity. The 2009 appropriations bill includes a massive increase in funding for the Teacher Incentive Fund, a program available to state and local education agencies that provides funds for increased performance-based salaries for teachers and principals in high-need schools.<sup>151</sup>

Meanwhile, in a major speech to 200 education leaders at the end of September Secretary Arne Duncan launched the reauthorization process for the No Child Left Behind Act (ESEA), calling on them to “join with us to build a transformative education law that guarantees every child the education they want and need—a law that recognizes and reinforces the proper role of the federal government to support and drive reform at the state and local level.”<sup>152</sup>

## ***Afterword***

This historical essay is a resource for anyone who needs a simple, objective, chronological account of the events, issues, and participants in federal education policy since the mid-twentieth century. It highlights several important trends that have characterized these past six decades, as well as some apparently emerging trends:

- **Education policy and federalism.** Traditionally in American history, education policy has been largely the province of the states, with the federal government providing some financial support for various purposes at various times. In recent years, however, the federal government has taken on increasing leadership in the national dialogue about education, asserting greater control over policy at the state and even local levels through legislation, regulations, and financial incentives.
- **Changing purposes of federal aid to education.** From the 1950s through the 1970s, the primary goal of most federal aid to education was equity—attempting to redress the inequities in education that resulted from socioeconomic disadvantage, discrimination, and language background. In recent decades, however, the emphasis has shifted to closing achievement gaps by raising the effectiveness of education for all students.
- **Growing emphasis on standardized, measurable outcomes.** During the second half of this period, policymakers have moved away from programs whose outcomes could not be evaluated for statewide, national, or international comparison. Rather, they have striven increasingly to employ standard measures to determine the effectiveness of education in general and specific programs in particular.

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<sup>150</sup> U.S. Department of Education. Race to the Top Fund – Executive Summary, Notice of Proposed Priorities, Requirements, Definitions, and Selection Criteria. Accessed 16 October 2009 at <http://www.ed.gov/programs/racetothetop/executive-summary.pdf>.

<sup>151</sup> “Teacher Incentive Fund.” <http://www.ed.gov/programs/teacherincentive/index.html>. Accessed 16 October, 2009.

<sup>152</sup> “Secretary Duncan Says Rewrite of 'No Child Left Behind' Should Start Now; Reauthorization Can't Wait,” <http://www.ed.gov/news/pressreleases/2009/09/09242009.html>. Accessed 29 October, 2009.

- **Growing networks and coalitions.** Increasingly, coalitions of states—rather than individual states pursuing their own agendas—have led advocacy for change in federal education policy.

These trends relate closely to the three topics selected for initial emphasis in this project (economically disadvantaged students; standards, assessments, and accountability; and state advocacy). Developments in other topic areas will undoubtedly emerge as the project unfolds (for example, the possible impacts of changing immigration policy on bilingual education).

The topic under consideration in this essay and this project falls entirely within the recent past. Many key figures from its early history are here to talk and write about it; some are still active and influential. This is a great boon for archivists: vast numbers of important records can still be found, and the people who created them (or were involved in the issues they address) can help locate and provide valuable context for them.

With this advantage, however, comes a challenge. The more recent the past under examination, the less evidence there is to support historical conclusions—and the more difficult to distinguish passing swings of the pendulum from developments that will persist for decades. As a result, archivists—in consultation with education policymakers, government officials, researchers, historians, and other professionals—must use their best judgment in identifying and collecting the records that likely will hold historical importance in decades to come. The States' Impact on Federal Education Policy Project is committed to building as strong and significant a national documentary record of its topic as possible. This essay will assist us in understanding the enormously complex issues inherent in the topic and in locating important records. We hope it will also be of use to educators, students, policymakers, and interested citizens.

We welcome responses to this historical essay and the project itself. In particular, if you are aware of records relevant to education policy that currently reside in repositories or private hands, please contact us. Meanwhile, we invite you to explore the resources available on the States' Impact on Federal Education Policy Project [website](http://www.sifepp.nysed.gov).<sup>153</sup>

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<sup>153</sup> [www.sifepp.nysed.gov](http://www.sifepp.nysed.gov)

## ***Credits and Acknowledgments***

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### **Federal Education Policy and the States, 1945-2004: A Brief Synopsis**

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