

The Ever Debatable Federal Role

Implications for Education Policy



February 4, 2016
Michael D. Usdan

Preface

In the fall of 2015, 50.1 million K-12 students entered 98,500 American public schools, spread across 13,500 school districts.¹ Throughout American history, public education has been decentralized, controlled primarily from the local and state levels. The debates over the appropriate federal role in education have been persistent for centuries, oscillating between the federal government and the states with regards to scope, strengthening, and responsibility. Dr. Michael Usdan, senior fellow and former president at the Institute for Educational Leadership, recounts the pivotal turns in the federal-state relationship throughout American history and offers a critical analysis of the growing federal role since the 1960s and the increasing influence and visibility of the federal government in education matters. His insightful analysis of the federal executive, legislative, and judiciary roles in education from a historical context offers foundational knowledge of federal involvement and policy in education, and it also helps to explain both the backlash against the perceived response of federal overreach and intrusion into state and local matters by some and a continued push for state transparency and accountability by others. The new federal Every Student Succeeds Act represents the latest recalibration and the tenuous nature of the federal-state relationship.

Dr. Helen Janc Malone
National Education Policy Fellowship Program Director
Institute for Educational Leadership

¹ (Footnote: Institute of Education Sciences. (2015). Back to school statistics. Washington, DC: National Center for Education Statistics, U.S. Department of Education. Retrieved from <http://nces.ed.gov/fastfacts/display.asp?id=372>)

The Ever Debatable Federal Role: Implications for Education Policy

Michael D. Usdan

Senior Fellow and Former President

Institute for Educational Leadership

(The following recreates the keynote address presented on November 19, 2014 at the UCEA Politics of Education Day on Capitol Hill, Washington, D.C.)

If one is to fully understand the current raging debate about the federal role and influence in shaping educational policy, it is necessary to understand its history in the context of our federal governance structure. As we all have studied since our grade school years, education is legally a state responsibility under the reserved powers clause of the 10th Amendment to the U.S. Constitution. Thus, the paramountcy of state and local control of public education is deeply embedded historically not only in our legal system but also in our political, economic, and cultural norms and traditions. Indeed, the theology of localism in education remains singularly powerful throughout the country, and efforts to expand federal control by both the Bush and Obama administrations have generated a widespread backlash.

The federal role in shaping educational policy has been relatively minor and unobtrusive until recent decades. Although the national government has had some involvement since colonial times, its engagement has come periodically and sporadically, largely in times of national crisis justified by the General Welfare Clause of the Constitution.

There has been an impressive list of federal education programs throughout our history which have been sanctioned “for the common defenses and general welfare of the United States,” under the flexible language found in the aforementioned General Welfare Clause. The programs, however, (unlike recent iterations of ESEA) were limited and categorical in scale and did not impinge upon the daily teaching and learning processes in America’s 14,000 public school districts and 100,000 elementary and secondary schools.

There are numerous examples of such categorical programs scattered throughout our national history since colonial times. The Survey Ordinance of 1785 and the Northwest Ordinance of 1787 dedicating Western lands for education purposes were framed with the national welfare very much in mind. The federal land grants provided by the Morrill Act of 1862 (at the time of the Civil War) enabled the creation of many of the nation’s leading public institutions of higher education.

The Smith-Hughes Act of 1917 at the time of World War I fostered vocational education and home economies for high school students. The Servicemen's Readjustment Act of 1944 (the famous "G.I. Bill") provided federal grants for veterans to receive a college education. The Impact Aid laws of 1950 (at the time of the Korean War) provided federal funds for schoolhouse construction and operating expenses to districts which had a large influx of federally employed personnel and property taken off the tax rolls.

The great majority of federal legislation has been enacted at times of national economic or political crisis. A more recent example of such a categorical federal response was the passage of the National Defense Education Act (NDEA) of 1958, which provided funds to improve science, foreign language, math, and guidance programs in the public schools.

The timing and substance of the passage of NDEA was a direct national response to the security threat posed by the Russians in launching their space vehicle Sputnik in 1957. There were fears in the midst of the Cold War that we were lagging behind the Russians in the space race and that our schools had to buttress the national capacity to compete in courses like science, math, and foreign language. Indeed, the language in and goals articulated in NDEA are quite analogous to the spirit and aims of the current efforts to strengthen the nation's STEM (science, technology, engineering, math) capabilities; contemporary STEM proposals also are designed to enhance the country's capacity to compete in an increasingly competitive global economy.

Throughout most of American history, there has been persistent debate about the appropriate financial and substantive role that should be played by the federal government in education matters. The federal role, however, had not been extensive until the 1960s. The aforementioned categorical, crisis-driven initiatives did not impinge on fundamental local and state decision-making prerogatives, and the federal share of support for elementary and secondary education as a very junior fiscal partner historically hovered around 4 percent. The agency responsible for federal programs was buried in the bowels of huge agencies such as the former Department of Health, Education, and Welfare. It is important to note in reflecting on this relatively low status of education that education did not achieve cabinet status until 1979, when the Department of Education was established. The U.S. Office of Education, housed in the Department of Health, Education, and Welfare, was the federal agency responsible for education until then. However, it was relatively weak and considered by most to not be a particularly influential entity but rather a "sleepy statistics-gathering appendix" of a much more important and larger cabinet level Department.

This historical lack of saliency began to change dramatically in the 1960s with the passage of the Civil Rights Act of 1964 and the very consequential and game-changing

Elementary and Secondary Education Act (ESEA) of 1965. The federal politics of education were altered profoundly with the enactment of ESEA, which represented the quintessence of then President Lyndon Johnson's consensual political skills which neutralized long-standing opposition to large-scale federal aid. For decades, efforts to expand the federal role had been stymied by seemingly intractable deterrents predicated on transcendent political issues like race, resources, religion, and control. Southerners in the U.S. Senate benefiting from seniority and representing a one-party section of the country (at that time Democratic, not Republican) historically were opposed to an enlarged federal role because of their fear that it would increase pressure to desegregate schools. Business and tax-conscious groups bitterly opposed efforts to expand federal funding by the National Education Association and other interest groups because of their fear that the economy would suffer once the financial floodgates of general aid to K-12 education were opened.

The ever-present and controversial issue of the separation of church and state also confounded efforts to increase large-scale federal aid. Strict separationists citing the First Amendment opposed federal aid to non-public religious schools while advocates for Catholic, Lutheran, Jewish day, and other religion-related schools refused to support expanded aid unless their institutions would also be recipients of any proposed federal largesse. A final major deterrent to expanded federal financial aid was the historical, long-standing, and deep-seeded ideological or philosophical opposition to centralized control of education—an issue that certainly remains very contentious in current debates about the Common Core and other related issues.

The epochal ESEA of 1965 neutered in one remarkable legislative act these very major deterrents which were, and remain, significant political, social, and economic issues. Various Titles of ESEA met the needs of diverse constituencies. Approximately 90 percent of the nation's school districts received resources predicated on the number of poor students from Title I, the "Big Bertha" of the legislation. Church-related schools were provided with non-sectarian instructional, library, and transportation resources under the "child benefit" theory (see below). Under-resourced state education agencies received assistance as well.

The specter of federal control surfaced as the civil rights movement gained traction in the 1960s. Title VI of the Civil Rights Act of 1964 provided for the enforcement of federal desegregation orders in schools. This provision, plus the Title I funding formula of ESEA, provided the federal government with unprecedented leverage to compel compliance from recalcitrant Southern states like Mississippi, which would stand to lose approximately 20 percent of its K-12 budget if it did not adhere to desegregation orders. In other words, federal officials for the first time possessed the "carrot" of substantial resources to incentivize compliance and the "stick" under the law to

withhold funds for non-compliance. This newly found leverage and the willingness of the Johnson Administration to enforce the new laws in the mid-1960s, not surprisingly, created a strong backlash among Southern political and educational leaders, one of whom called the then-U.S. Commissioner of Education the “Commissar” of Education, alluding, of course, to the centralized control of education found in communist Russia.

It is important to discuss not only the legislative history of the federal role but also to recognize the profound influence of the federal courts in shaping educational policy. The critically important influence of the Supreme Court and the federal judiciary is often overlooked in discussions of the federal role in education. A handful of examples will document this reality. For example, the unanimous decision of the Supreme Court in *Pierce v. Society of Sisters* in 1925 held that the state of Oregon could not require all youngsters to attend public schools. It guaranteed, largely on grounds of property rights and parental freedom of choice, the continued existence of non-public schools in a state where the legislature had passed a statute requiring public school attendance for all youngsters between 8 and 16 years of age. This decision affirmed the rights of parents throughout the nation to have their children attend non-public schools.

In *Cochran v. Louisiana Board of Education*, decided by the Supreme Court in 1930, it was determined that the state of Louisiana could provide non-sectarian instructional materials and transportation services to non-public school students. This decision provided the legal rationale and legitimization for the “child benefit” theory, which ultimately undergirded ESEA’s resolution of the earlier mentioned church-state impasse which historically was such a major deterrent to the passage of large-scale federal aid.

The *Brown v. Board of Education* desegregation decision of 1954 was without question one of the Supreme Court’s most momentous decisions, not only for education policy but for every facet of life in the nation. As we know, in this case, the Court unanimously declared that *de jure* school segregation was unconstitutional. This decision overturned the “separate but equal” doctrine which had prevailed for many decades and dramatically altered the control and organization of hundreds of Southern and border state school systems.

Many other important decisions documenting the federal judiciary’s significant impact on education policy can be cited in areas like school finance, church-state relations, teacher rights, and academic freedom. For example, if one Supreme Court justice had altered his vote in the school finance case *San Antonio Independent School District v. Rodriguez* in 1973 and the federal government was held to be fiscally responsible for ensuring equity of resources across the nation’s school systems, the entire structure

of how we finance education would have been transformed. I will not belabor the importance of the federal courts in greater detail but suffice it to say that their incredibly significant (albeit too often ignored) importance in the shaping of educational policy has been amply documented.

In the post-1965 era, as ESEA was being implemented, the federal role became more visible. The various components of ESEA, particularly Title I, impacted schools and school districts significantly and established the federal government as an important player in influencing education policy in unprecedented ways.

A persuasive case can be made that 1965 was the watershed date when the federal government finally addressed K-12 education in its own right and not as an instrument of other national problems and policies as reflected historically in its passage of categorical programs at times of national crisis. Since 1965, the federal government has taken on equity or equalization issues more directly to complement its traditional roles of gathering statistical data, promoting research and development programs, and implementing the aforementioned categorical programs during periods of national crisis.

Indeed, K-12 equity issues were the focus of federal attention throughout the 1970s, although the halcyon civil rights thrust of the Johnson era was somewhat thwarted. Numerous federal categorical programs in areas like bilingual education were enacted. Although support remained minuscule (4 to 6 percent of the total cost of K-12 education), these programs had far greater influence than their fiscal dimensions might indicate. In essence, these federal programs, as relatively insignificant as they may have been in cost or size, focused public attention on long ignored equity issues and solidified the federal government's role as the protector of civil rights.

One of the inherent tensions in the recent expansion of federal influence relates to the fundamental funding patterns which support K-12 education. The federal government's share of support throughout most of the nation's history, as we alluded to earlier, has been approximately 4 to 6 percent. Currently it is only between 8 and 10 percent. Indeed, even at the zenith of the Race to the Top program, which provided unprecedented resources to education, the federal share was only approximately 15 percent.

What has happened somewhat uniquely in education is a contradiction of the popular adage that "he who pays the piper calls the tune." As federal influence has escalated, it has exacerbated tensions with local and state political and educational leaders who ask the understandable question as to why the very junior financial partner "can call the tune" and demand 100 percent of the accountability.

The 1975 passage of the federal Individual Disabilities and Education Act (IDEA) was of particular importance as it finally shed a national spotlight on the special needs of thousands of youngsters with disabilities who were not able to gain access to public education. It was estimated at the time IDEA was passed that almost half of special needs children were not even attending school.

These programs, while receiving strong support among many equity-oriented citizens, also began to sow the seeds of disenchantment with federal intrusiveness that are so manifest in today's volatile political context. Critics of the federal role began to decry small categorical programs that have little impact and helped to create dysfunctional narrow "pass-through" bureaucracies at the state and local—as well as federal—governmental levels. As the categorical programs multiplied, critics bemoaned the "hardening of the categories."

The backlash against elements of the IDEA legislation had even more significant implications for subsequent debates about the appropriate federal role. Critics of IDEA, while applauding the beneficial aspects of widening access to special services, condemned facets of the legislation as it was implemented. The federal government had initially indicated that it would assume 40 percent of IDEA costs but the level of its support has remained less than 20 percent throughout the legislation's history. This unfulfilled fiscal commitment played directly into the hands of growing numbers of those who were critical of unfunded federal mandates. In addition, of course, the requirement in IDEA that each student be the recipient of an individualized learning plan did not sit well with many teachers and administrators who viewed the requirement—fairly or unfairly—as another tedious federal bureaucratic constraint and an intrusion upon their professional independence.

These apprehensions about the escalating federal role became very apparent with the advent of the Reagan Administration in 1981. As discussed earlier, the cabinet-level Department of Education had been created in 1979 during the Carter Administration. President Reagan very early in his tenure reportedly wanted to eliminate the fledgling Department, reflecting his ideological reservations about intrusive "big centralized government." The Department, of course, survived, but the backlash against it alleged intrusiveness persisted. Its influence and visibility somewhat ironically has grown through the years because of the effective use of the bully pulpit by both Republican and Democratic Secretaries of Education. Secretaries as different ideologically as William Bennett, Richard Riley, Lamar Alexander, and Arne Duncan have effectively used the Department's national platform to have great influence on the public's perceptions and attitudes about major education issues.

I trust that this somewhat lengthy historical contextual presentation has provided the necessary backdrop to fully understand the nature of the contemporary polarized debate about the appropriate role that should be played by the federal government in determining educational policy. The history is important because it helps to explain why the unprecedented proactive role played by the federal government in very recent years has elicited such negative responses from those who believe so strongly that it runs counter to the American tradition of local and state control of education which has prevailed throughout most of our history.

Passage of the federal No Child Left Behind (NCLB) legislation in 2001, which was a further reauthorization of the original ESEA, represented a singularly important landmark in the history and evolution of the federal role in education. For the first time, federal legislation was enacted that had direct ramifications for the teachers and students in every school and classroom in the land. George W. Bush, a “compassionate conservative” Republican president, spearheaded passage of the bill which generated broad bipartisan support among influential “liberal” Democrats, particularly the late Senator Ted Kennedy of Massachusetts and Representative George Miller of California. The irony is that NCLB, unquestionably the most intrusive federal legislation ever enacted by the U.S. Congress, was initiated by a Republican president leading the party which traditionally had opposed for decades more extensive federal involvement in school matters. Passage of the NCLB legislation, in essence, was the capstone of years of efforts to make schools more accountable—efforts that were supported by the country’s most influential business and political leaders.

NCLB imposed a host of requirements on school districts if they wished to maintain their eligibility for federal funding. The bill required (among other things): annual testing in reading and math in grades 3-8, interventions in low-performing schools, teacher evaluations, mandatory public school and supplemented services if school failures persisted, and reports on Adequate Yearly Progress (AYP), disaggregated data.

This cascading of requirements, as NCLB was implemented, not surprisingly generated tremendous discontent among teachers, administrators, and school board members throughout the country. In addition to trampling on the hallowed traditions of local control of education, complaints were rampant that more and more decisions were being made by those who were furthest from the classrooms where teaching and learning occur.

These complaints were transmitted to elected officials at every governmental level as NCLB ultimately became toxic. Efforts to reauthorize the legislation (an event that is to occur every five years) failed and the original legislation still stands at this writing 14 years after its original enactment. New political coalitions have formed over the years

with very different perspectives as to what a newly authorized ESEA should look like. Civil rights and equity advocates remain distrustful as to whether states and localities will meet the educational needs of growing members of poor and minority children. They continue to have greater confidence that federal officials will be more mindful of equity concerns than their state and local counterparts.

The Democrats themselves are divided over the shape of NCLB's next iteration. For example, a relatively new organization, Democrats for Education Reform, has been supportive of charters and many of the accountability measures undertaken by the Obama Administration. The organizations representing educators such as the multi-million member teacher unions, school administrators, and school board members, who usually are firmly in the Democratic camp on federal legislative issues, have been alienated by policies of the present Department of Education. The Department, they feel, has ignored the perspectives of practitioners and professional educators and has pushed for unfair and unproven accountability measures that undermine teacher and administrator morale.

The Republicans, having gained control of both the House and the Senate in the November 2014 elections, have as their major agenda restoring the prerogatives of the states and localities in determining education policy. They sharply criticize federal overreach and desire to consolidate federal programs and give the states far greater influence. Indeed, Republicans advocate stripping most of the federal authority and punitive elements currently embedded in NCLB. Although some components of a renamed NCLB, such as Title I, school ratings, charter school grants and disaggregated data, will probably survive the reauthorization process whenever it might occur, and the Republican Congress will no doubt persist in seeking to dramatically curb the federal role. Republicans simply will not support a continuation of the current level of federal influence, and the viability of compromise with Democrats and those supporting continued federal leadership on equity and related issues is a very open question, as is the issue of whether a presidential veto can be averted.

The partisan and philosophical cleavages over the appropriate federal role are reflected in the ongoing national debates over issues like the Race to the Top program and the Common Core. Race to the Top provided unprecedented federal resources (approximately \$4 billion) to schools as part of the stimulus program designed to help the nation recover from the economic collapse it confronted in 2008. The U.S. Department of Education devised a competition that became quite controversial. Most states applied at a time when resources were particularly scarce as they strove to acquire desperately needed funds to maintain their teaching force, as well as to meet other pressing education needs. To be successful in the competition, the applicants had to satisfy in their proposals a number of Department-set criteria such as

incorporating teacher evaluation plans, opportunities to establish charter schools, and plans to adopt the Common Core. These requirements served as cannon fodder for critics who condemned federal overreach as only a fraction of the applying states were successful in acquiring grants. Some criticisms also were articulated about the “competitive” nature of the grants in a field like education where federal funds have customarily been dispersed on a formula basis.

No issue has precipitated more controversy about the federal role then the current raging debate about the Common Core State Standards initiative. Indeed, very few education issues in our history (perhaps only the desegregation issue) have become so integral to mainstream American politics. Republican governors like Chris Christie of New Jersey and Bobby Jindal of Louisiana have disavowed their one-time support for the Common Core, which many Republicans regard as an ill-disguised effort by the federal government to take control of American education. Indeed many political pundits predict that Jeb Bush’s chances to win the Republican nomination for president will be seriously compromised by his continued support for the Common Core.

The raging contemporary national debate about the Common Core has generated more heat than light. The standards were developed by two national state-based organizations, the National Governors Association and the Council of Chief State School Officers. There initially was widespread agreement that it was important for the country to move toward a voluntary consensus on national standards in the areas of English language arts and mathematics. The Common Core initiative in its early stages elicited widespread praise and support from diverse quarters, and more than 45 states agreed to participate. It was widely viewed as an important step forward in the nation’s struggle to reach consensus on what should constitute accepted standards in the core areas of English language arts and mathematics.

Despite this auspicious beginning, critics remained skeptical and feared that the initiative was a Trojan horse that would inexorably lead to national or federal standards. These skeptics articulated the belief that most of the states which endorsed the Common Core signed on because they were spurred by the hopes of winning federal Race to the Top dollars. They contend that many revenue-starved states acquiesced reluctantly to the lure of badly needed federal funding and in fact were “bribed” to buy into the Common Core initiative. Many supporters of the initiative desperately wanted the Obama Administration to steer totally clear of the effort. The Administration’s exploratory efforts to connect the Common Core’s standards to the reauthorization of ESEA was feared as a potential kiss of death.

The ongoing debate about the Common Core supports the early fears of many of its backers that it could well implode and be caught up in the generic anti-federal government backlash which has erupted in recent months. Bitter opposition to the centralization of power in education has to a disturbing degree outweighed the rationality that went into the common standards movement. In fact, as the current political debates reflect, prevailing critiques of centralizing power in education are part and parcel of the same negative political sentiments being articulated currently against perceived federal intrusions in areas like health care, the environment, private corporate operations, and other major policy realms.

What then can one predict about the future role of the federal government in shaping educational policy? The future is very uncertain and in many ways tied into the larger context of views of American federalism. There recently have been growing sentiments against all forms of governments, particularly directed at the federal government. The 2016 presidential election is likely to be fought over differences between the two major parties in their perceptions of the role of government in American society.

(Addendum, February 2016)

As for education, like many other pundits, I was surprised that NCLB was recently reauthorized in a rather remarkable and unexpected manifestation of Congressional bipartisanship. The new Every Student Succeeds Act (ESSA) reflects another significant turning point in the ever evolving twists and turns of how education policy is shaped in our federal governance system. The recent federal overreach and the devolution of responsibility to the states that has ensued reflects just another chapter in the endless debates about the appropriate roles that should be played by the different levels of government. If the states and locals do not avail themselves of these new opportunities to mitigate complex educational issues, there should be no shock or surprise if greater influence once again shifts back to the federal government.