

CATO HANDBOOK FOR CONGRESS

POLICY RECOMMENDATIONS FOR THE 108TH CONGRESS

CATO
INSTITUTE

Washington, D.C.

28. Department of Education

Congress should

- abolish the Department of Education and
- return education to the state, local, or family level, as provided by the Constitution.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

—Tenth Amendment to the U.S. Constitution

The U.S. Department of Education, formed in 1979 during the Carter administration, represents an intrusion by the federal government into an aspect of American society for which there is no constitutional authority. The U.S. Constitution gives Congress no authority whatsoever to collect taxes for, fund, or operate schools. Therefore, under the Tenth Amendment, education should be entirely a state and local matter.

For more than 200 years, the federal government had left education to those who were in the best position to oversee it—state and local governments and families. Richard L. Lyman, president of Stanford University, who testified at the congressional hearings on forming the new department, pointed out that “the two-hundred-year-old absence of a Department of Education is not the result of simple failure during all that time. On the contrary, it derives from the conviction that we do not want the kind of educational system that such arrangements produce.”

Without question, the Framers intended that most aspects of American life would be outside the purview of the federal government. They never envisioned that Congress or the president would become involved in funding schools or mandating policy for classrooms. As constitutional scholar Roger Pilon has said: “From beginning to end the [Constitution] never mentioned the word ‘education.’ The people, in 1787 or since, have

never given the federal government any power over the subject—despite a concern for education that surely predates the Constitution.”

Why then was the Department of Education created? President Jimmy Carter, during whose watch the new department came into being, had promised the department to the National Education Association. Contemporary editorials in both the *New York Times* and the *Washington Post* acknowledged that the creation of the department was mainly in response to pressure from the NEA. According to Rep. Benjamin Rosenthal (D-N.Y.), Congress went along with the plan out of “not wanting to embarrass the president.” Also, many members of Congress had made promises to educators in their home districts to support the new department. The *Wall Street Journal* reported the admission of one House Democrat: “The idea of an Education Department is really a bad one. But it’s NEA’s top priority. There are school teachers in every congressional district and most of us simply don’t need the aggravation of taking them on.” Former house minority leader Bob Michel termed the Department of Education the “Special Interest Memorial Prize” of the year.

The new department started with a \$14 billion budget and more than 4,000 employees, all transferred from other departments. Proponents claimed that cost savings would be realized, but opponents pointed out that a new department would require not only a new secretary but also the corresponding assistant secretaries, under secretaries, support staff, office space, regional offices, cars, and other amenities. All of those would be necessary for the new department to look and act like a bona fide cabinet department. Critics of the department also pointed to the Department of Energy, formed two years earlier, which had been the subject of a tangle of regulations and confusing policies. Rep. John Rousselot (R-Calif.) said: “If you like the Department of Energy, you’ll love the Department of Education. You’ll have every bureaucrat in Washington looking at your school district.”

Has the Department of Education produced budget savings or a streamlining of federal education programs? No. The department’s budget has continually increased, from \$14.5 billion in 1979 to \$47.6 billion in 2002. According to analyses of federal education spending before and after the creation of the Department of Education, after its creation, federal spending on education increased at twice the rate it had before.

Chester Finn, who served as assistant secretary of education from 1985 until 1988, made the following observation about why education spending increased faster once we had a Department of Education:

When budget time rolls around, a department is able to exert more clout in pressing for larger funding from Congress than can smaller agencies. It carries a bureaucratic momentum and muscle all its own. Since it no longer has to compete with health and welfare, as it did under HEW, the new department will be able to exert the full brunt of the education lobby in its behalf upon the Congress. Make no mistake about it, the principal reason the NEA and the administration wanted to elevate the Office of Education to a full-fledged department was to give it the political power and prestige to seek bigger budget increases for federal education programs.

Along with the budget, the maze of federal education programs continues to expand under the Department of Education. Wayne Riddle, representing the Congressional Research Service, testified before a 1995 congressional hearing that the potential overlap of Department of Education programs with those of other federal agencies has probably increased since 1979 in such areas as vocational education and job training, science education, and early childhood education. Last year, the House Education and Workforce Committee reported that there were more than 760 education-related programs spread across 39 federal agencies costing taxpayers \$120 billion per year. President Bush's 2003 budget calls for federal spending on myriad education programs that are clearly local in nature—from special reading and after-school programs to tutoring preschoolers to job training for their parents.

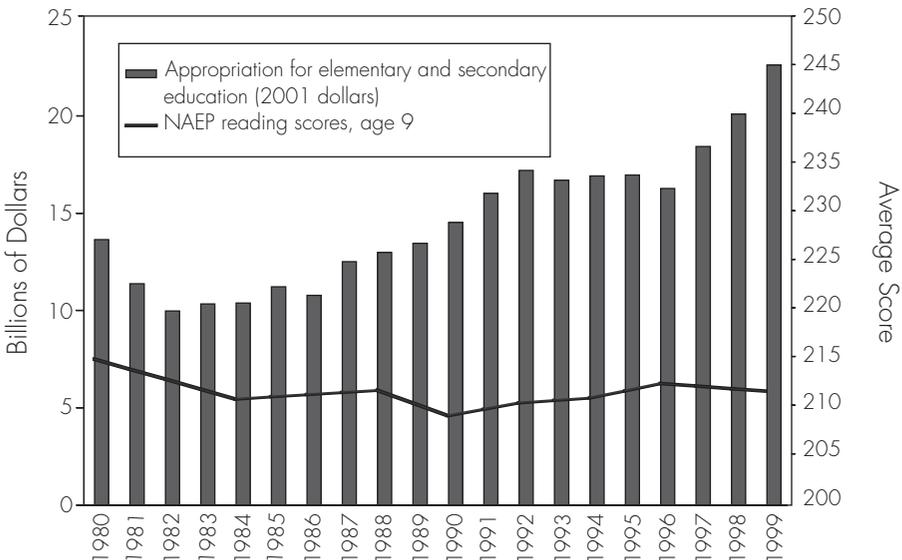
Also, the Department of Education and its nearly 5,000 employees have had virtually no positive effect on the performance of schools or the academic gains of school children. The department's own national history report card issued in May 2002 found that only 43 percent of the nation's 12th graders had at least a basic understanding of U.S. history, unchanged from 1994, the last time the test was given. On one question, the majority of high school seniors chose Germany, Japan, or Italy as a U.S. ally in World War II. Diane Ravitch, education adviser to the Bush administration and professor of education at New York University, called the results "truly abysmal." "Since the seniors are very close to voting age or have already reached it," she observed, "one can only feel alarm that they know so little about their nation's history and express so little capacity to reflect on its meaning." Comparisons of U.S. students with students in other countries show that U.S. students still lag behind students in countries such as Finland, Australia, and New Zealand.

It's fair to say that the Department of Education has had no apparent positive effect on the academic performance of U.S. school children.

Instead, its major effect has been to move the focus on improving education from parents and local districts to Washington, D.C. Federal guidelines now cover topics such as how schools discipline students, the content of sex education courses, and the gender of textbook authors. Former secretaries of education Lamar Alexander and William Bennett have stated that the department has “an irresistible and uncontrollable impulse to stick its nose into areas where it has no proper business. Most of what it does today is no legitimate affair of the federal government. The Education Department operates from the deeply erroneous belief that American parents, teachers, communities and states are too stupid to raise their own children, run their own schools and make their own decisions.”

American taxpayers have spent virtually billions of dollars on the Department of Education since its founding in 1979, yet test scores and other measures indicate no improvement in American education (Figure 28.1). The benefits promised by the proponents of the department plainly have not materialized. There is simply no legitimate reason to continue this failed experiment.

Figure 28.1
Average Student Performance and Cost



SOURCE: U.S. Department of Education, National Center for Education Statistics, National Assessment of Educational Progress, 1999 Long Term Trend Assessment, www.nces.ed.gov/nationsreportcard/reading/trends-national.asp; and U.S. Department of Education, Budget Office, Education Department Budget by Major Program, www.ed.gov/offices/OUS/Budget02/History.pdf.

No Child Left Behind Act

The foremost policy initiative of the Bush administration to date has been the No Child Left Behind Act, a comprehensive plan to encourage states to improve the performance of American public schools through mandatory testing and an accountability plan that requires states to determine which schools are failing. The supporters of the NCLBA assure us that these actions will improve schools. But the response of public school districts to the federal mandate thus far shows how resistant the education establishment is to change. Most districts have designated only a few schools as alternatives to those schools in their districts categorized as failing, leaving students with little choice of an alternative. And in many cases, the designated alternative schools are not much better than the school the child would be leaving. Some districts, like Washington, D.C., have nowhere to send children who wish to leave poorly performing schools. D.C. School Board president Peggy Cooper Cafritz noted that all D.C. high schools, except four, “are generally lousy, so where do we send the children?” Few school districts have published user-friendly information about available schools, and some districts do not even allow parents to designate on the transfer application where they want their child to go.

Although the bill requires that schools show “adequate yearly progress,” there is no consensus about what amount of progress is adequate, so states can formulate a definition that shows most schools as successful, even if the parents are dissatisfied with the results. In July 2002 Arkansas, for example, reported zero failing schools, while Michigan reported 1,513 failing schools. This is a highly dubious situation since Arkansas ranked 42nd in the nation and Michigan ranked 26th on the American Legislative Exchange Council’s recent “Report Card on American Education,” which ranks states on the basis of K–12 academic achievement.

The NCLBA is also a funding initiative that gives billions of additional federal dollars to failing schools. The Washington, D.C., school district, a school system with a long string of documented inefficiencies and a history of waste and corruption, already spends the second largest amount per student in the nation. Under the new federal program, the D.C. public schools will receive \$149.8 million in additional funding. No reasonable person who is familiar with the D.C. system would expect to see any benefit result from placing those funds in the hands of the people who are in charge of running the failing D.C. schools.

The NCLBA provides the Department of Education with \$26.5 billion for spending on the program and perpetuates most of the old federal education programs, most of which are ineffective and wasteful. The total could climb to \$37 billion a year by the end of the six-year authorization period. If past experience is any guide, those dollars will go primarily to feeding the hungry bureaucracy and will have little positive impact on public school students.

Instead of decreasing the role of the federal government in education, the NCLBA allows the federal government to intervene more than ever in what should be strictly a local and state matter. While the act provides school districts with increased flexibility in spending some of their federal subsidies, mandated testing and staff restructuring represent an unprecedented usurpation of the authority of local communities to run their own schools.

During his presidential campaign, Bush emphasized that he did not want to become the “federal superintendent of schools.” But the NCLBA gives the president and the federal government far too much power over local schools and classrooms. Instead of proposing more top-down fixes for education, the president should use his position to push for the return of control of education to states and localities and urge state-level reforms that return the control of education to parents.

New Directions

There is a growing awareness that parents, not distant government bureaucrats, should have more power over their children’s education. After years of legal battles over school choice in places like Cleveland, Ohio, and Milwaukee, Wisconsin, the U.S. Supreme Court ruled in June 2002 that school vouchers were constitutional and that parents could use them at either secular or religious private schools. School choice programs now exist in Ohio, Wisconsin, Florida, Pennsylvania, Arizona, Maine, Vermont, and Illinois. Many more states will consider school choice legislation during the coming two years.

The way for Congress to improve American education is to step aside and let the states experiment with choice in a variety of ways. Some will expand charter schools or experiment with private management. Others will institute scholarship tax credits, parental tax credits, or vouchers either on a limited basis or open to all students. The most successful policies and programs will be emulated by other states.

Nine Reasons to Abolish the Department of Education

1. The Constitution provides no authority whatsoever for the federal government to be involved in education. Eliminating the department on those grounds would help to reestablish the original understanding of the enumerated powers of the federal government.
2. No matter how brilliantly designed a federal government program may be, it creates a uniformity among states that is harmful to creativity and improvement. Getting the federal government out of the picture would allow states and local governments to create better ways of addressing education issues and problems.
3. If education were left at the local level, parents would become more involved in reform efforts. Differences in school effectiveness among states and communities would be noted, and other regions would copy the more effective programs and policies.
4. The contest between Congress and state legislatures to demonstrate who cares more about education would be over, allowing members of Congress to focus on areas and problems for which they have legitimate responsibility.
5. Since most information about the problems and challenges of education is present at the local level, Congress simply does not have the ability to improve learning in school classrooms thousands of miles away. These problems are best understood and addressed by local authorities and parents.
6. The inevitable pattern of bureaucracy is to grow bigger and bigger. The Department of Education should be eliminated now, before it evolves into an even larger entity consuming more and more resources that could be better spent by parents themselves.
7. The \$47.6 billion spent each year by the Department of Education could be much better spent if it were simply returned to the American people in the form of a tax cut. Parents themselves could then decide how best to spend that money.
8. The Department of Education has a record of waste and abuse. For example, the department reported losing track of \$450 million during three consecutive General Accounting Office audits.
9. The Department of Education is an expensive failure that has added paperwork and bureaucracy but little value to the nation's classrooms.

Since Congress has no authority under the Constitution to collect taxes for, fund, or regulate schools, it should not tax Americans to fund a huge federal education bureaucracy that exercises dictatorial control over curriculum, standards, and policy. The only actions that should be taken at the federal level are those that deregulate education. For example, Congress should repeal the many regulations and mandates governing special education and allow states to set up their own programs for educating special needs children. Instead of mandating tests or other accountability measures and subsidizing the public school monopoly, it should free states from their addiction to federal funds, eliminate the myriad unnecessary and unconstitutional federal programs, and allow the states to take the lead in reforming education.

Except in Washington, D.C., where Congress has constitutional authority over legislative matters, it should not set up demonstration projects or fund voucher programs. Federal tax credits for parents who use private schools may seem attractive, but, since Congress has no constitutional authority to collect taxes for education, it would be better to simply institute a tax cut for all Americans, eliminate the wasteful and meddlesome Department of Education, and allow individual Americans to decide how best to spend that money. We must remember that parents, not politicians, are in the best position to make decisions about the education of their children.

James Madison, who proclaimed that the powers of the federal government should be few and enumerated, would be shocked at what the president and Congress are doing today in relation to an aspect of family life that was never intended to come under the control of Congress, the White House, or any federal agency. Congress should take the enlightened view, consistent with that of the nation's Founders, and draw a line in the sand that won't be crossed. Education is a matter reserved to the states, period.

Suggested Readings

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—*Prepared by David Salisbury*

