

**THE
FEDERAL
ROLE IN THE
FEDERAL SYSTEM:
THE DYNAMICS OF
GROWTH**

**Intergovernmentalizing the Classroom:
Federal Involvement in Elementary and
Secondary Education**

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Washington, D.C. 20575 • March 1981



THE FEDERAL ROLE IN THE FEDERAL SYSTEM: THE DYNAMICS OF GROWTH

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A Crisis of Confidence and Competence

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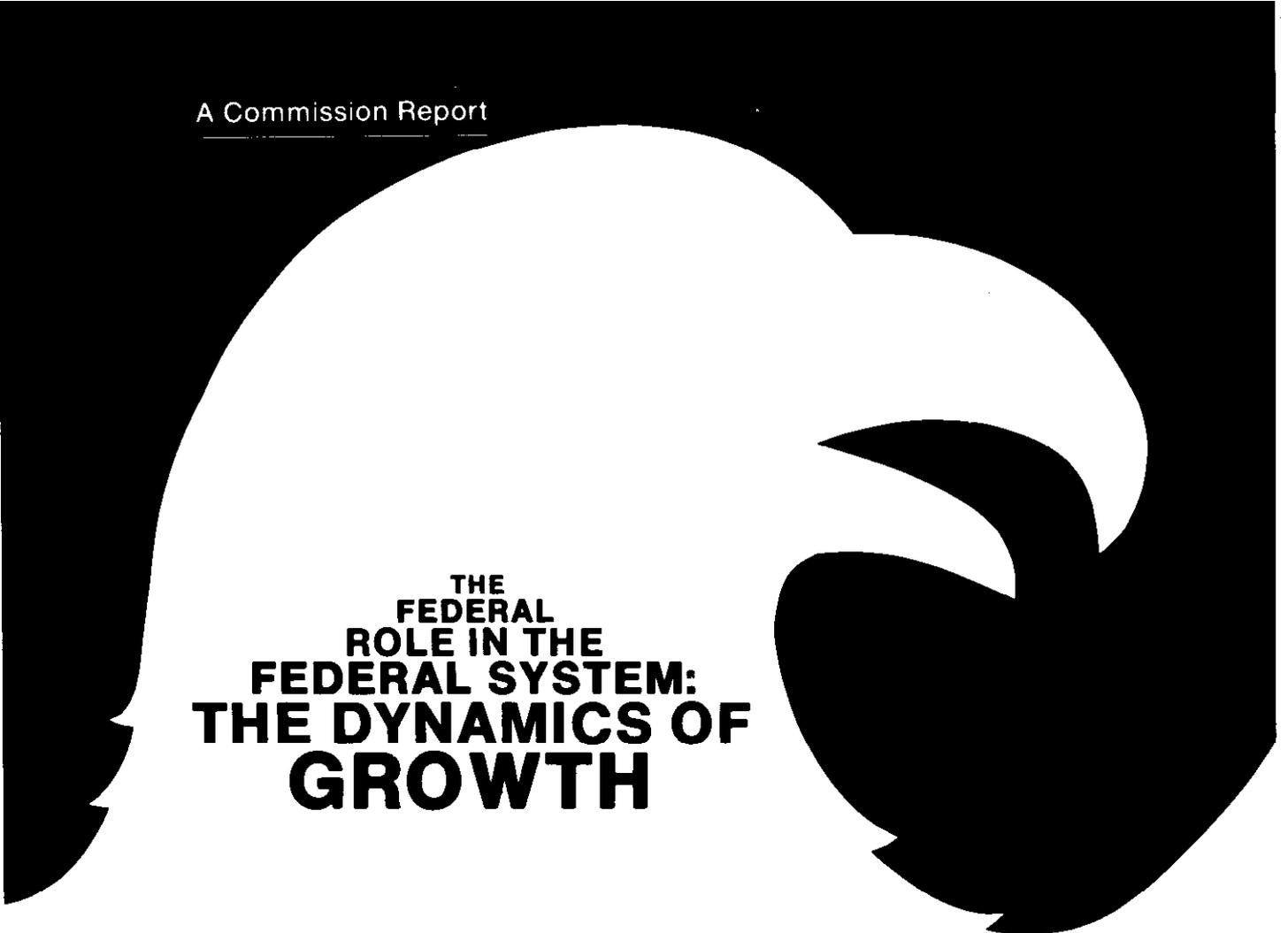
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A Commission Report



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Foreword

The Advisory Commission on Intergovernmental Relations (ACIR) was established by Public Law 380, which was passed by the first session of the 86th Congress and approved by the President on September 24, 1959. Section 2 of the act sets forth the following declaration of purpose and specific responsibilities for the Commission:

Sec. 2. Because the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation and coordination of activities between the levels of government, and because population growth and scientific developments portend an increasingly complex society in future years, it is essential that an appropriate agency be established to give continuing attention to intergovernmental problems.

It is intended that the Commission, in performance of its duties, will:

(1) bring together representatives of the federal, state, and local governments for the consideration of common problems. . . .

(5) encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation.

(6) recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues among the several levels of government. . . .

Pursuant to its statutory responsibilities, the Commission has from time to time been requested by the Congress or the President to examine particular problems impeding the effectiveness of the federal system. The 1976 renewal legislation for General Revenue Sharing, Public Law 94-488, mandated in Section 145 that the Commission:

. . . study and evaluate the American federal fiscal system in terms of the allocation and coordination of public resources among federal, state, and local governments, including, but not limited to, a study and evaluation of: (1) the allocation and coordination of taxing and spending authorities between levels of government, including a comparison of other federal government systems. . . . (5) forces likely to affect the nature of the American federal system in the short-term and long-term future and possible adjustments to such system, if any, which may be desirable, in light of future developments.

The study, *The Federal Role in the Federal System: The Dynamics of Growth*, of which the present volume is one component, is part of the Commission's response to this mandate. Staff were directed to: (a) examine the present role of the federal government in the American federal system; (b) review theoretical perspectives on American federalism, the assignment of functions, and governmental growth; and (c)

identify historical and political patterns in the development and expansion of national governmental domestic activities. This case study on the federal role in elementary and secondary education is one of seven prepared by Commission staff pursuant to this assignment.

Abraham D. Beame
Chairman

Acknowledgments

This volume was prepared by the governmental structure and functions section of the Commission staff. Timothy J. Conlan was responsible for the research and preparation of the case study. Anne H. Hastings provided valuable assistance in preparing the final version of the report. Other members of the Commission staff, especially David R. Beam, project manager, and Cynthia Cates Colella, analyst, reviewed the manuscript and provided helpful suggestions. Delores Dawson and Kathleen M. Behringer valiantly performed the secretarial tasks involved.

Special thanks go to the following scholars who reviewed and commented on a preliminary version of this report: Dr. Edith K. Mosher of the University of Virginia; Dr. Jerome T. Murphy of Harvard University; and Dr. Mary Frase Williams of the National Conference of State Legislatures. Full responsibility for content and accuracy rests, of course, with the Commission and its staff.

Wayne F. Anderson
Executive Director

David B. Walker
Assistant Director

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The Scope Of Federal Involvement In Elementary And Secondary Education

*It used to be said that the Minister of Education in France could look at his watch and say with confidence: "At this moment, every sixth-grade child in France is doing the following problem in math. . . ."*¹

However exaggerated, this anecdote suggests the relative degree of decentralization characteristic of American education. To this day, the federal role in elementary and secondary education remains unquestionably secondary to that of state and local government. The federal Department of Education (ED) continues to have only limited and indirect influence over such central educational functions as school curriculum, standards, and personnel. The federal contribution to total educational expenditures is only about 8%, and this proportion has remained relatively constant for the last decade. As recently as 1974, the Supreme Court declared that:

No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to the quality of the educational process.²

The federal role in basic education is an important one, however, and much more so than

it was only 20 years ago. For example, in fiscal 1979, the federal government spent \$6.7 billion on elementary, secondary, and vocational education.³ Outlays in 1980 are expected to be over \$7.3 billion.⁴ These funds are provided in approximately 50 federal programs directly concerned with elementary and secondary education.⁵

Equally important is the character of federal involvement. The federal government has assumed an activist posture in education, which has served to magnify the impact of its modest fiscal role. Most federal programs stress national purposes which Congress believes have been inadequately addressed by state and local authorities. These objectives may even be at odds with local priorities. There are programs designed to:

- aid the economically, physically, and educationally disadvantaged;
- provide auxiliary educational and social services;
- promote new educational skills;
- stimulate educational innovation; and
- support educational research.

In addition, these federal grant programs are conditioned by laws and regulations designed to eliminate racial and sexual discrimination and to promote student rights and the rights of the handicapped. Finally, the federal courts

have had an important and growing influence on a variety of state and local educational practices, particularly in cases of court-ordered desegregation.

THE GROWTH OF FEDERAL INVOLVEMENT

Until World War II, the permanent federal role in elementary and secondary education was almost negligible. The propriety of any federal involvement remained an issue of contention well into the 1950s. Federal spending on elementary and secondary education lagged far behind that of most other domestic functions, including the less visible field of higher education. Federal spending did not reach \$100 million until 1947, and the federal share of educational expenditures was less than 3% until 1950 (see *Table 1*). Only in vocational education was the federal presence very significant, and even this did not represent a very large commitment of funds.

In these years prior to significant federal involvement, American education was undergoing dramatic development and change. Illiteracy rates fell precipitously as compulsory public education became widespread (see *Chart 1*). The number of high school graduates grew steeply in return (see *Chart 2*). The organizational structure of education was also evolving. By 1960, there were only one-third as

Table 1

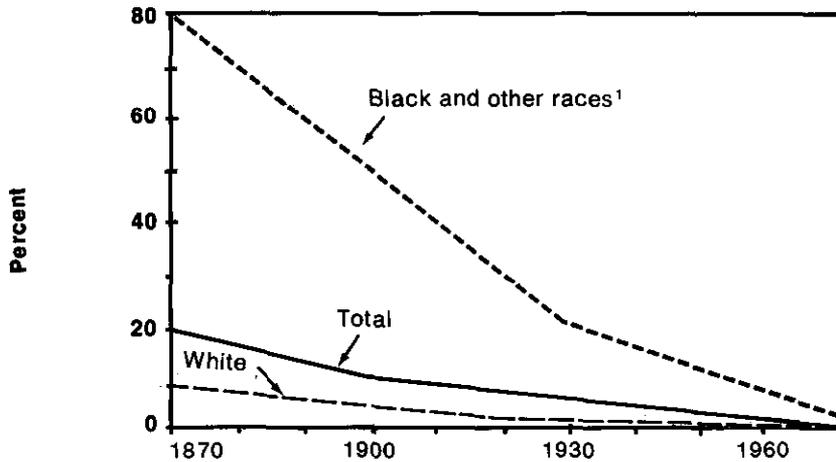
HISTORICAL SUMMARY OF PUBLIC ELEMENTARY AND SECONDARY SCHOOL FINANCE, 1919-50 (in thousands of dollars)

	1919-20	1920-30	1939-40	1949-50
Total Revenue Receipts	\$970,120	\$2,088,557	\$2,260,527	\$5,437,044
Federal Government	2,475	7,334	39,810	155,848
State Governments	160,085	353,670	684,354	2,165,689
Local Sources, including intermediate	807,561	1,727,553	1,536,363	3,115,507
Percent of Revenue Receipts From:				
Federal Government	.3%	.4%	1.8%	2.9%
State Governments	16.5	16.9	30.3	39.8
Local Sources, including intermediate	83.2	82.7	68.0	57.3

SOURCE: U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *Digest of Education Statistics 1979*, Washington, DC, U.S. Government Printing Office, 1979, p. 38.

Chart 1

PERCENT OF ILLITERACY IN THE POPULATION, BY RACE: UNITED STATES, 1870-1969



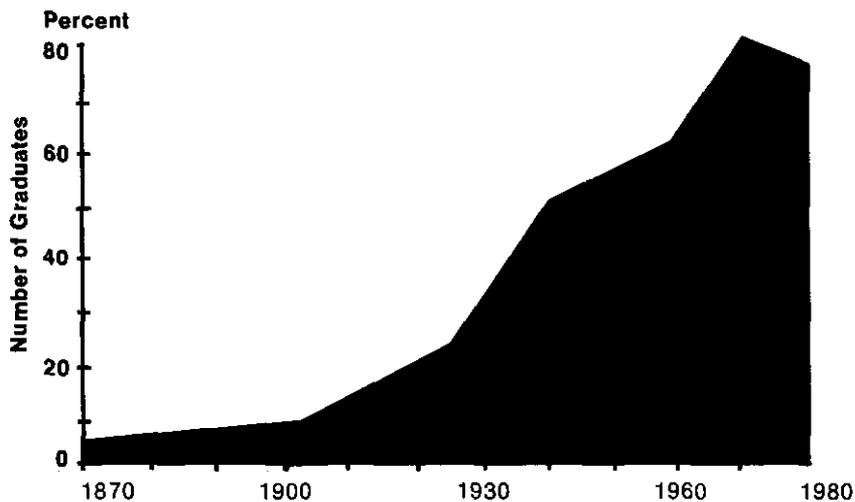
NOTE: Data for 1870 to 1930 are for the population ten years old and over; data for 1959 and 1969 are for the population 14 years old and over.

¹Data for 1969 are for blacks only.

SOURCE: U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *Digest of Education Statistics 1975*, Washington, DC, U.S. Government Printing Office, 1976, p. 17.

Chart 2

NUMBER OF HIGH SCHOOL GRADUATES FOR EACH 100 PERSONS 17 YEARS OF AGE: UNITED STATES, 1869-70 to 1976-77



SOURCE: U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *Digest of Education Statistics 1979*, Washington, DC, U.S. Government Printing Office, 1979, p. 64.

Table 2

**NUMBER OF SCHOOL DISTRICTS,
1929-30 to 1976-77**

School Year	School Districts ¹
1929-30	— ²
1931-32	127,531
1933-34	— ²
1935-36	— ²
1937-38	119,001
1939-40	117,108
1941-42	115,493
1943-44	111,383
1945-46	101,382
1947-48	94,926
1949-50	83,718
1951-52	71,094
1953-54	63,057
1955-56	54,859
1957-58	47,594
1959-60	40,520
1961-62	35,676
1963-64	31,705
1965-66	26,983
1967-68	22,010
1970-71	17,995
1972-73	15,960
1973-74	16,730
1975-76	16,376
1976-77	16,271

¹Includes operating and nonoperating districts.

²Data not available.

NOTE: Beginning in 1959-60, includes Alaska and Hawaii.

SOURCE: U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *Digest of Education Statistics 1979*, Washington, DC, U.S. Government Printing Office, 1979, p. 61.

many school districts as had existed 30 years before. During the next ten years, this number was reduced by almost two-thirds again (see Table 2). Meanwhile, the state role in educational finance more than doubled between 1930 and 1950 (see Table 1). After several years of stability, the state role has begun rising again in recent years. As both state and federal involvement have grown lately, the local share in funding education has fallen to less than 50% (see Table 3).

Despite years of concerted efforts, a federal program of general aid to education was never enacted. When significant growth in the federal

role occurred in the 1950s and 60s, it was in the form of targeted or limited purpose aid for specific national objectives. By 1960, a categorical pattern of federal assistance was well established. At that time, the major federal aid programs were:

- assistance to federally affected areas, or impact aid: \$258 million;
- vocational education: \$45 million;
- instructional equipment, *National Defense Education Act*: \$62.7 million; and
- auxiliary nutrition, the school lunch and milk programs: \$305.5 million (see Table 4).

The major breakthrough in federal aid to education, however, came in 1965 with the passage of the *Elementary and Secondary Education Act* (ESEA). This landmark legislation added several additional programs of federal assistance in five titles:

- Title I** — Educationally deprived children
- Title II** — School library resources
- Title III** — Supplemental education centers
- Title IV** — Educational research
- Title V** — Strengthening state education agencies

ESEA was largely responsible for raising the federal contribution to education from \$1.1 billion in 1963-64 to \$3.0 billion in 1967-68. This, in turn, increased the federal percentage of public education expenditures from 5% to 9% (see Table 3).

Contrary to the expectations of many, the federal percentage of public educational expenditures did not continue to grow beyond this point. Since 1967, it has remained in the 8% to 9.5% range, varying somewhat from year to year. While federal expenditures have risen incrementally in dollar terms, they have only kept pace with inflation and state and local spending. Within this federal sphere, however, several new programs have been added. Federal aid to support the education of the handicapped began on a small scale in the early 1960s and has since become a major federal program category, with outlays of \$589 million in fiscal 1979.⁶ Federal funding of bilingual

Table 3

**ESTIMATED EXPENDITURES OF PUBLIC ELEMENTARY AND SECONDARY SCHOOLS,
BY SOURCE OF FUNDS, 1959-60 to 1977-78¹**

Source of Funds by Level and Control	1959-60	1961-62	1963-64	1965-66	1967-68	1969-70	1971-72	1973-74	1975-76	1977-78
	<i>(Amounts in Billions of Current Dollars)</i>									
Total Public	\$ 15.9	\$ 18.7	\$ 21.6	\$ 26.5	\$ 33.2	\$ 41.0	\$ 48.3	\$ 57.2	\$ 71.1	\$ 82.7
Federal	.7	.9	1.1	2.1	3.0	3.4	4.6	5.1	6.5	7.8
State	5.6	6.7	8.0	9.6	12.1	15.8	18.0	23.5	31.1	36.1
Local	9.5	11.0	12.4	14.7	18.0	21.7	25.6	28.5	33.4	37.7
All Other	.2	.1	.1	.1	.1	.1	.1	.1	.1	.1
	<i>(Percentage Distribution)</i>									
Total Public	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Federal	4.6	5.1	5.0	8.0	9.0	8.2	9.5	8.9	9.2	9.4
State	35.4	35.9	37.2	36.3	36.5	38.6	37.2	41.1	43.7	44.9
Local	59.6	58.6	57.4	55.3	54.2	52.9	53.1	49.8	47.0	45.6
All Other	.4	.4	.4	.4	.3	.3	.2	.2	.1	.1

¹In addition to regular schools these figures include "other" elementary and secondary schools such as residential schools for exceptional children, federal schools for Indians, and federally operated elementary and secondary schools on military posts.

SOURCE: U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *The Condition of Education 1977*, Vol. 3, part 1, Washington, DC, U.S. Government Printing Office, 1978, p. 170; and *Digest of Education Statistics 1977-78*, Washington, DC, U.S. Government Printing Office, 1978, p. 21.

Table 4

**FEDERAL FUNDS FOR SELECTED ELEMENTARY AND SECONDARY EDUCATION PROGRAMS AND
RELATED ACTIVITIES, 1960-78**
(in thousands of dollars)

Program	1960	1962	1964	1966	1968	1970	1972	1974	1976 ¹	1978 ²
Elementary and										
Secondary Education³	63,529	54,821	71,489	915,174	1,436,732	1,467,792	1,869,081	1,766,412	2,166,322	2,586,118
Educationally										
Deprived Children⁴				746,904	1,049,116	1,170,355	1,570,388	1,460,058	1,760,814	2,129,400
Consolidated Programs⁵	63,529	54,821	71,489	168,270	387,616	291,245	272,683	268,000	326,006	334,173
Bilingual Education						6,192	26,010	38,354	79,502	122,545
School Assistance in Federally										
Affected Areas	258,198	282,909	334,289	409,593	506,372	656,372	648,608	558,526	598,884	810,300
Basic Vocational										
Education Programs⁶	45,179	51,762	54,503	118,396	250,197	271,282	370,619	399,209	514,057	519,043
Education for the										
Handicapped⁷	72	248	2,516	4,918	16,793	47,846	67,933	89,947	152,050	328,463
Emergency School Aid⁸				5,291	7,437	10,608	92,214	196,045	204,027	265,860
Follow Through							2,024	46,595	39,825	57,300
Indian Education								15,694	42,046	57,882
Office of Education Salaries										
and Expenditures⁹	11,608	12,664	14,251	25,901	40,906	47,714	84,694	77,411	117,618	132,450
School Lunch and Milk										
Programs	305,512	366,900	411,700	421,900	543,845	676,196	1,213,075	1,266,673	1,890,276	2,810,082

¹Does not include transition quarter amounts.

²Estimated.

³Includes amounts distributed under provision of the Elementary and Secondary Education Act of 1965 (ESEA) and the National Defense Education Act (NDEA). Funds authorized under title VI of ESEA for education of the handicapped are not included here but under "Education for the Handicapped."

⁴Title I of ESEA includes funds for students more than one year below grade level, Indian children, migratory children, handicapped children, and neglected and delinquent children.

⁵Includes amounts authorized under titles II, III, and V of ESEA and NDEA titles III, X, and a portion of V for guidance, counseling, and testing.

⁶Also includes program amounts for students with special needs.

⁷Amounts for teacher training not included.

⁸Also includes Civil Rights services and training.

⁹Includes higher education and amounts for technical service, planning and evaluation, and special studies, and projects not elsewhere covered.

SOURCE: U.S. Department of Health, Education, and Welfare, National Center for Education Statistics, *Digest of Education Statistics 1979*, Washington, DC, U.S. Government Printing Office, 1979, pp. 166, 172.

Table 5

FEDERAL ELEMENTARY SECONDARY EDUCATION PROGRAMS AND FISCAL YEAR 1977 APPROPRIATIONS TO DATE BY MAJOR PURPOSE

(in millions of dollars)

For Specified Types of Students	To Support Selected Curricula, Resources, or Services			To Provide General Financial Support For Specific Types of Districts ^d		To Support Research, Change, and Innovation			
		For General Student Population	For Auxiliary Services						
ESEA Title I	\$2,285	Vocational Education ^c	\$448	School Lunch and Milk Programs	\$2,792 ^e	Impact Aid	\$793	Support and Innovation Grants	\$194
Education for the Handicapped	468 ^a	Libraries and Learning Resources (K-12 part)	154	Educational Tele- vision Facilities	77 ^f	BIA Indian Schools	249	Various Planning, Research, and Innovation Grants	40
Vocational Education Set-Asides and Special Programs	123 ^b	Miscellaneous Curricula Support (environmental, energy, science, ethnic heritage, etc.)	23					National Institute of Education	90 ^b
Emergency School Aid	275								
Bilingual Education	115	Special Projects and	48						
Indian Education	45	Training							
Head Start	475								
Other ESEA	85								
Total: \$8,779 (percent)	3,871 (44%)		673 (8%)		2,869 (33%)		1,042 (12%)		324 (4%)

^aIncludes special education manpower development and preschool incentive grants; does not include innovation grants (included elsewhere).

^bEstimated.

^cIncludes only 1976-77 school year funds for vocational education minus special set-asides; includes adult education; appropriations for certain parts deferred due to lack of authorizing legislation.

^dAt present, no federal program provides unrestricted direct aid for education. However, nearly \$1.6 billion in unrestricted transfers to general purpose governments were expended on elementary-secondary education in fiscal year 1977, including an estimated \$1,435 million in general revenue sharing funds, \$53 million of the federal payment to the District of Columbia, and \$100 million of the state share of lease payments made by private firms for the use of federal lands.

^eSource: OMB, "Special Analysis J," (1979), p. 219.

^fEstimated. Includes both elementary and secondary education. Source: National Center for Educational Statistics, *Projections of Education Statistics to 1985-86*, p. 143.

SOURCE: Congressional Budget Office, Congress of the United States, *Budget Issue Paper Elementary, Secondary, and Vocational Education: An Examination of Alternative Federal Roles*, Washington, DC, U.S. Government Printing Office, January 1977.

education began in 1970 and has grown with similar rapidity in recent years (see Table 4).

Several additional smaller programs (such as environmental education) plus support for educational research and innovation and the *Emergency School Aid* program designed to assist schools undergoing the process of desegregation, round out the current federal aid to education effort. In Table 5, these programs are categorized according to five general strategies, and the level of fiscal support for each purpose is indicated.

REGULATIONS AND THE COURTS

While the relative share of federal expenditures in education has remained constant in recent years, regulations and grant conditions attached to federal aid have become increasingly important. This process began largely with ESEA. Because Title I is distributed to about 95% of the nation's school districts, it provided a vehicle for enforcement of the anti-discrimination objectives of the 1964 *Civil Rights Act*. Title VI of the *Civil Rights Act* pro-

Figure 1

FEDERAL PROGRAMS FOR ELEMENTARY AND SECONDARY EDUCATION AND RELATED ACTIVITIES, 1787-1979

Year	Program
1787	<i>Northwest Ordinance</i> —authorized land grants for the establishment of educational institutions.
1867	<i>Department of Education Act</i> —authorized the establishment of the Office of Education.
1917	<i>Smith-Hughes Act</i> —provided for grants to states for support of vocational education.
1933	School lunch programs—provided assistance in school lunch programs. The use of surplus farm commodities in school lunch programs began in 1936 and the <i>National School Lunch Act of 1946</i> continued and expanded this assistance.
1941	Amendment to <i>Lanham Act of 1940</i> —authorized federal aid for construction, maintenance, and operation of schools in federally impacted areas. Such assistance was continued under Public Laws 815 and 874, 81st Congress, in 1950.
1946	<i>George-Barden Act</i> (P.L. 79-586)—expanded federal support of vocational education.
1950	Public Laws 815 and 874—provided assistance for construction (P.L. 815) and operation (P.L. 874) of schools in federally affected areas.
1954	School Milk Program (P.L. 83-690)—provided funds for purchase of milk for school lunch programs. <i>Cooperative Research Act</i> (P.L. 83-531)—authorized cooperative arrangements with universities, colleges, and state education agencies for educational research.
1958	<i>National Defense Education Act</i> (P.L. 85-864)—provided assistance to state and local school systems for strengthening instruction in science, mathematics, modern foreign languages, and other critical subjects; improvement of state statistical services; guidance, counseling, and testing services and training institutes. P.L. 85-926—federal assistance for training teachers of the handicapped authorized. P.L. 85-905—authorized a loan service of captioned films for the deaf.
1963	<i>Vocational Education Act of 1963</i> (P.L. 88-210)—increased federal support of vocational education, including support of residential vocational schools, vocational work-study programs, and research, training, and demonstrations in vocational education.
1964	<i>Civil Rights Act of 1964</i> (P.L. 88-452).
1965	<i>Elementary and Secondary Education Act</i> (P.L. 89-10)—authorized grants for elementary and secondary school programs for children of low income families; school library resources, textbooks, and other instructional materials for school children; supplementary educational centers and services; strengthening state education agencies; and educational research and research training.
1966	<i>Elementary and Secondary Education Amendments of 1966</i> (P.L. 89-750)—in addition to modifying existing programs, authorized grants to assist states in initiation, expansion, and improvement of

hibits practices of racial discrimination by recipients of federal grants-in-aid. This linkage with ESEA proved important in stimulating the desegregation of many school systems in the south.

Other federal grant conditions have also become important. The *Rehabilitation Act of 1973* and the *Education for All Handicapped Children Act of 1975* have had major consequences for American schools. These laws have mandated increased educational access to the handicapped through such procedures and ser-

vices as elimination of architectural barriers and the "mainstreaming" of handicapped children. Despite impressive growth in federal aid to assist local schools in meeting these aims, federal funds have fallen far short of compliance costs, and the effects upon local educational procedures and priorities have been substantial. Federal law has also affected local practices dealing with access to educational records, through the *Family Educational Rights and Privacy Act of 1974* (also known as *The Buckley Amendment*).

Figure 1

**FEDERAL PROGRAMS FOR ELEMENTARY AND SECONDARY EDUCATION
AND RELATED ACTIVITIES, 1787-1979.
(cont.)**

Year Program

- programs and projects for the education of handicapped children at the preschool, elementary, and secondary school levels.
- 1968** *Elementary and Secondary Education Amendments of 1967* (P.L. 90-247)—in addition to modifying existing programs, authorized support of regional centers for education of handicapped children, model centers and services for deaf-blind children, recruitment of personnel and dissemination of information on education of the handicapped; technical assistance in education to rural areas; support of dropout prevention projects; and support of bilingual education programs. Also, authorized advance funding.
- Vocational Education Amendments of 1968* (P.L. 90-576)—expansion of vocational education services to meet the needs of the disadvantaged.
- 1970** *Elementary and Secondary Education Assistance Programs, Extension* (P.L. 91-230)—authorized comprehensive planning and evaluation grants to state and local education agencies.
- Environmental Education Act* (P.L. 91-516)—established an Office of Environmental Education for the purpose of curriculum development, initiation and maintenance of environmental education programs at the elementary-secondary education levels; distribution of material dealing with environment and ecology.
- Appropriations for the Office of Education and for other purposes (P.L. 91-380)—provided Emergency School Assistance for assistance to desegregating local education agencies.
- 1972** *Education Amendments of 1972* (P.L. 92-318)—established a National Institute of Education; and a bureau-level Office of Indian Education. Amended current Office of Education programs. Prohibited sex bias.
- 1974** *Educational Amendments of 1974* (P.L. 93-380)—provided for the consolidation of certain education programs; established a National Center for Education Statistics.
- 1975** *Indian Self-Determination and Education Assistance Act* (P.L. 93-638)—provided for increased participation of Indians in the establishment and conduct of their education programs.
- 1976** *Education Amendments of 1976* (P.L. 94-482)—extended and revised federal programs for education assistance for vocational education and a variety of other programs.
- 1978** *Education Amendments of 1978* (P.L. 95-561)—established a comprehensive basic skills program and a community schools program; authorized a study of school finance reform and equalization.
- 1979** *Department of Education Organization Act* (P.L. 96-88)—established the cabinet-level Department of Education.

SOURCE: National Center for Education Statistics, *Digest of Education Statistics 1979*, Washington, DC, U.S. Government Printing Office, 1979, pp. 157-162.

Similarly, the impact of the federal courts on education has grown significantly in recent years. The obvious example, of course, has been the effort made by federal courts to eliminate practices of racial segregation and discrimination in the public schools. This began with the *Brown* decision in 1954, which outlawed segregated schools, and it continues to be the primary subject of court interest and influence in education. Additionally, however, the courts have been important in:

- religious issues—prohibiting public school prayers and defining relations be-

- tween government and parochial schools;
- issues of student rights—from verbal expression to dress codes;
- curricular matters—concerning treatment of sexual, cultural, and political issues;
- instructional matters—from bilingual education to the use of corporal punishment.

In these areas and others, informed observers agree that the role of the federal courts has become an increasingly noteworthy aspect of federal involvement in education.

FOOTNOTES

¹Kenneth Prewitt and Sidney Verba, *An Introduction to American Government*, New York, Harper and Row, 1976, p. 425.

²*Milliken v. Bradley*, 418 U.S. 717 at 741-742 (1974).

³Executive Office of the President, Office of Management and Budget, *The Budget of the United States Government: Fiscal Year 1981*, Washington, DC, U.S. Government Printing Office, 1980, p. 582.

⁴*Ibid.*

⁵ACIR staff estimate based on program descriptions contained in "Guide to OE-Administered Programs, Fiscal Year 1978," *American Education*, 14 (March 1978), pp. 27-35; and in Executive Office of the President, Office of Management and Budget, *Special Analyses: Budget of the United States Government: Fiscal Year 1979*, "Special Analysis J: Education," Washington, DC, U.S. Government Printing Office, 1978. This includes, primarily, programs intended for state and local education agencies. Related programs intended primarily for institutions of higher education are not included.

⁶OMB, *The Budget: Fiscal Year 1981*, *op. cit.*, p. 431.

Creation Of A Federal Role In Education— The Early Phases, 1785-1940

Almost one hundred years of bitter controversy over general aid to education preceded the enactment of the *Elementary and Secondary Education Act* (ESEA) in 1965. Throughout this long period, the fundamental issues in dispute remained remarkably the same, although the relative importance of each waxed and waned in an irregular fashion. These issues of race, religion, and federal control arose during consideration of the federal aid question following the Civil War, and each evaded satisfactory resolution until the 1960s. However, federal land grants to the territories and the states, first passed in 1785, can be considered an early form of federal aid to education. These early roots of federal aid deserve a brief examination.

THE ORDINANCES OF 1785 AND 1787 AND THE EARLY FEDERAL LAND GRANTS

Education was highly valued in colonial America. Its early religious origins were apparent; the inhabitants of the Massachusetts Bay Colony established the first schools in the 1640s under the *Old Deluder Act*.¹ These early religious roots were strengthened by the need for educated leaders—lawyers and clergy. By the time of the American Revolution, an educated citizenry was also deemed a prerequisite for democratic government. Finally, through-

out the 19th and 20th Centuries, education was highly valued as a means to social opportunity and advancement.

The system of education which arose was a highly decentralized one. Decentralization of education was consciously affirmed in the assignment of governmental roles under the Constitution. By virtue of the Tenth Amendment, public education was recognized to be a state and local function, along with most other areas of positive governmental activity such as public safety, health and morals. The founders' explicit rejection of a national university denotes the totality of this decentralization. Hence, governmental involvement in education in the pre-Civil War era was almost wholly state and local activity.

The single area in which the federal government assumed significant responsibility for education was in the promotion of education in the western territories. National involvement in this area began under the Articles of Confederation, with the *Land Ordinance of 1785*. It specified that the Northwest Territories (bounded by the Ohio River and the Great Lakes), which had been ceded to the national government by the states, were to be surveyed and divided into townships of 36 sections each. The proceeds from the sale of one section in each town was to be devoted to the maintenance of local public schools.

The *Northwest Ordinance of 1787* also served to promote education in the territories. This ordinance established procedures for territorial governance. Among its varied and numerous provisions, it declared that: "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."²

Land grants for education were continued under the *Statehood Acts*, beginning with the *Ohio Enabling Act of 1802*. As under the 1785 ordinance, the proceeds of one section from each township was granted for the support of local education. Later, states received two sections or even four sections per township. In all, the federal government granted 98.5 million acres to the states for public schools.³

The extent to which these early federal grants constituted a federal commitment to education has been a matter of some dispute. Sidney

Tiedt asserts that the *Northwest Ordinances*, "affirmed . . . [a] policy of governmental support of education."⁴ However, public lands policy, rather than education itself, was clearly the central consideration of Congress. Some observers, therefore, believe that the promotion of education through the early land grants was merely incidental to the basic goal of making the west attractive to settlement:

The advocates of federal support of public education have sought to rely on various federal actions, back to the Ordinance of 1785, to confirm a federal obligation in this field. However a review of the record shows that neither any separate action nor the entire collection of them together was motivated by a primary concern with public education as such. There were always other objectives for the realization of which education was used as a medium.⁵

Interestingly, Gordon Lee concludes that the early federal land grants affecting education: "were not enacted in response to public pressure. Rather they were the products of far-sighted statesmanship or the results of what was considered sound political maneuvering."⁶

FEDERAL AID TO EDUCATION IN THE RECONSTRUCTION ERA

The real beginning of the drive for general aid to education came in a burst of federal activity following the Civil War. At this time, the federal Bureau of Education was established, and major proposals for federal aid were advanced in Congress in 1870, 1872, 1879, 1884, 1886, and 1888. While all of them were directed mainly at conditions in the south, these bills ranged in scope from temporary federal assistance to a proposed national system of education. All were Congressional, and primarily Senate, initiatives. Each chamber of Congress passed a federal aid bill at least once, but neither did so concurrently. Finally, after 1890 and years of unsuccessful struggle, the issue of federal aid largely subsided for over two decades.

Two conditions established the context of

post-Civil War education legislation. One was control of the government by the Republican Party, which was committed to an activist federal role in a number of fields.⁷ This was particularly true of the "Radical" Republicans, who favored strong federal intervention in the Reconstruction era south.

The second important influence on the federal aid debate was the post-war condition of the south. As Gordon Lee writes:

At no time in the nation's history before the 1930s has the need for federal support of education been so acute, as widespread, and as widely recognized as in the years immediately following the Civil War.⁸

Poverty and illiteracy in the south were widespread, particularly among the newly emancipated slaves. For example, in the late 1860s, an estimated 42% of the south's population was illiterate, including 1.5 million whites and 2.7 million blacks.⁹ The region lacked resources for dealing with these problems, and its institutions lay in ruins from the war. As a result, federal responsibilities were extensive in the south, even before the federal aid to education debate. They included military occupation, the establishment of federally sponsored governmental institutions, and the operation of the Freedmen's Bureau, which by 1866 had assumed certain educational responsibilities in addition to providing food, shelter, and employment to impoverished blacks.

THE FEDERAL DEPARTMENT OF EDUCATION

An early step toward federal aid was the creation of the Federal Department of Education in 1867. This department was established:

... for the purpose of collecting such statistics and facts as shall show the condition and progress of education in the several states and territories, and of diffusing such information" relative to school administration, methodology, etc., as shall "promote the cause of education throughout the country."¹⁰

Legislation to create the department was introduced by Rep. James Garfield (R-OH) in 1866. It received endorsement by the National Association of State and City School Superintendents and the National Education Association (NEA). Lee notes, however, that: "The interest of the press, both lay and professional, was minimal."¹¹

The Congress was divided over the legislation. Some supporters wanted a much stronger bill, granting the department power to establish and enforce minimum national standards in education as a part of the Reconstruction effort. A state education group wrote soon after passage that: "... we fear that there are men in Congress who would like to erect this department into a central authority with compulsory powers."¹² On the other hand, there was considerable opposition in Congress to the creation of any federal agency dealing directly with educational concerns. On constitutional and states rights grounds, these opponents recognized no legitimate federal role in education whatsoever.

Despite strong opposition, a subcabinet level Department of Education was established in 1867, due to Garfield's "ceaseless efforts" and Republican control of the south. President Johnson signed the bill "only after he had received definite assurances that centralization of education was not intended."¹³ A powerful attempt to kill the department the following year wrought major changes in it. The department was reduced to obscure bureau status in the Department of Interior, where it remained for many years. Its staff and budget were cut, although its functions remained the same.

Despite these difficulties, Lee suggests that the education agency experience was important in two respects. First, it helped to "crystallize the sentiments of legislators and to some extent of educators" on the question of federal involvement in education. Secondly, it led to the creation of Congressional committees on education. "The importance of this development can hardly be overestimated."¹⁴

THE HOAR BILL

The most extreme federal aid to education proposal was also the first to receive serious consideration by Congress. On February 25,

1870, Rep. George Hoar (R-MA) introduced a bill "to establish a national system of education." Specifically, the bill sought to require a national system of general public education, to be operated by the states in accordance with federal standards. States that failed to create such systems were subject to direct federal intervention to correct their deficiencies. In such delinquent states, national authority was provided for the appointment of a federal superintendent of state schools; for the building of schools; for the production of textbooks; and for institution of a direct tax upon inhabitants, to be distributed according to census data on illiteracy. Proceeds from the sale of certain public lands were also to be distributed on this basis.

In reporting the bill from committee, Hoar described its aims as follows:

The purpose of this bill, by which it is for the first time sought to compel by national authority the establishment of a thorough and efficient system of public instruction throughout the whole country, is not to supersede, but to stimulate, compel, and supplement action by the state.¹⁵

Its focus was clearly to address the massive illiteracy of the south. The bill sought particularly to ensure the education of blacks, but its federal aid provisions dealt with southern poverty as well.

Reaction to the Hoar Bill was "of small proportions" but "almost universally unfavorable."¹⁶ "Violent blasts of denunciation" were issued by education interests like the NEA, which supported unrestricted federal educational assistance instead.¹⁷ Catholic opposition more or less established the church's position toward federal assistance for the next century. It saw in the Hoar Bill a design "to suppress Catholic education, gradually extinguish Catholicism in the country, and to form one homogeneous American people after the New England evangelical type."¹⁸ Aside from such organized responses, however, there was little public attention given the bill. Lee states that:

The press had not yet become aware . . . that the issue of federal relations to

education was worthy of its notice. Most newspapers . . . carried no mention of either the education problem or the effort in Congress to alleviate it.¹⁹

Consistent with this mainly negative reaction, the Hoar Bill failed utterly in the House. Hoar defended its Constitutionality on the basis of the spending power and on the guarantee of a republican form of government.²⁰ He argued that republican government was impossible when, "only one-fourth of the persons who are growing up to assume the function of citizens will be able to read and write."²¹ Congressional opponents, however, successfully attacked the bill's Constitutionality on the basis of the Tenth Amendment. They maintained that it was antidemocratic, over centralized, open to fraud, and reflected no public demand.

The ultimate result of the bill was probably counterproductive to the cause of federal aid, although it did serve to heighten the issue's salience in Congress. It acted to polarize the federal aid issue and to raise suspicions. As a result of the Hoar Bill, Catholic opposition to federal aid in general became adamant. The white south grew wary. In future proposals, aid proponents would be burdened by remembrance of a national system of education and the fear that federal aid could pose the first step.

THE LAND GRANT PROPOSALS

Two aid to education proposals were important during the remainder of the 1870s; one passed in the Senate and one in the House. Both differed sharply from the interventionist character of the Hoar Bill, seeking instead to use the revenues from public land sales for the benefit of education.

One bill, introduced into the House by Rep. Legrand Perce (R-MS) in 1872, provided for the creation of a permanent national fund for education consisting of the net proceeds from the sale of public lands. Moneys were to be distributed to all states that provided free public education to children between the ages of six and 16. The use of these funds was limited, however, to the provision of teachers' salaries, leaving operating and construction costs of education to the states. In what became a

continuing issue in education legislation, the bill was amended on the House floor to prohibit the withholding of federal aid from segregated schools.

Similar legislation was introduced into the Senate in 1879 by Sen. Ambrose Burnside (R-RI). This bill also proposed the creation of an educational fund composed of the proceeds from public land sales, and it distributed moneys in similar fashion. In an attempt to attract additional support, however, the Burnside proposal made land grant colleges eligible for one-third of the education grants.

These pieces of legislation failed to arouse much interest from either the general public or organized groups such as farmers and laborers. Lee observes that even educators were divided over the issue of federal aid.²² The NEA and the Bureau of Education, however, supported the legislation fully: "The two most vehement champions of federal aid to common school education, and particularly aid through the use of land sale proceeds during the 1870s were the National Education Association and the Bureau of Education."²³

The parties differed on the question of federal aid to education, but the issue was not an important one for them. Republican Presidents Grant and Hayes indicated some support for the concept, and Grant, moreover, supported a Constitutional amendment requiring that all states provide free, compulsory public education. For their part, the Democrats opposed federal aid in their 1876 party platform, reaffirming their traditional support for states rights and state responsibility for education.

Other federal aid opponents included many educators in the northeast, which already possessed the nation's best educational system and would not have benefited from a literacy-related federal aid program. This region also had a strong private school sector that traditionally opposed federal aid. Catholic opposition to federal aid actually intensified during the 1870s. The church completely rejected the concept of federal involvement. In the case of the Perce Bill, there also existed Congressional opposition to its administrative procedures, which some thought to be unworkable.

Both bills passed only in their chamber of origin. The Perce Bill became the only federal aid to education bill to pass the House of Rep-

resentatives for half a century. Support from southern Republicans was crucial to this success. In contrast, the Burnside Bill passed the Senate overwhelmingly. This was due in part to its connection with the popular land grant colleges. Supporters also included many southerners, who had concluded that its benefits, which favored the south, outweighed their traditional regional and partisan objections to federal aid.

FEDERAL CASH GRANTS FOR EDUCATION

During the 1880s, the struggle for federal aid to education centered on the Blair Bill, which was introduced five times during that decade. It passed the Senate three times—in 1884, 1886, and 1888. Lee wrote that this legislation represented both "the climax of the 19th Century struggle to obtain federal aid," and "the beginning of current activity in this area."²⁴

The bill submitted by Sen. Henry Blair (R-NH) throughout the 1880s remained in most respects the same. The federal aid provided was to be explicitly temporary, a ten-year program to meet "emergency" conditions in the south. In a major departure from the past, federal assistance was to be in the form of direct cash grants, rather than land grants or proceeds, to be distributed according to state illiteracy rates. Also significant were the scope and number of grant requirements which conditioned state eligibility for federal aid. States were required to match the amount of federal assistance in their own spending on education (a condition which was thought to cause hardship for poorer southern states). States were further required to provide: "... by law, a system of free common schools for all of its children of school age, without distinction of race or color, either in the raising or distributing of school revenues or in the school facilities provided."²⁵

As in previous legislation, the maintenance of segregated schools was permitted under the bill for reasons of political necessity, but federal assistance was to be equitably apportioned between black and white schools. State reports were required to deal with this and other matters of expenditure and attendance. Minimum subjects to be taught were indicated. Finally,

aid was to be spent on school operations. It was not permissible in most instances to use federal assistance for school construction.

According to Lee, the Blair legislation attracted "widespread" public interest, although he notes that: "educators were far more active and vocal . . . while groups less directly concerned were, in some instances, apparently completely disinterested."²⁶ These educators were crucial in advancing the cause of federal assistance to education: "For the first time, the education profession, in an organized way and on a national scale, led the fight outside of Congress for federal aid."²⁷ This was particularly true of educators in the south, for whom the benefits of legislation were particularly great. At the urging of the Commissioner of Education, the NEA agreed to support direct appropriations in 1882, reversing its earlier endorsement of land grants. Other supporters included President Chester Arthur, who announced his support for the legislation in his annual messages to Congress in 1882 and 1883.

Opponents of federal aid to education remained many, however. A sizeable number of educators continued to oppose the concept, and these continued to come largely from the northeast. Catholic opposition remained very strong. At one point, Blair labelled his opponents, "organs of Jesuitism," while the *Catholic Journal* said of Blair: "a hatred of Catholicity . . . [is] a concealed but powerful motor in all his acts."²⁸ While the federal aid issue was not central to the political parties, Democratic predilections were to oppose federal aid to education as involving questionable Constitutionality and infringing upon states' rights. As President Cleveland remarked: The preservation of the partitions between proper subjects of federal and local care and regulation is of such importance under the Constitution . . . that no consideration of expediency or sentiment should tempt us to enter upon doubtful ground.²⁹ Several southern Democratic Governors, however, supported federal aid provided that it had no federal strings.

In Congress, party positions were weak enough to allow many Democratic Senators to vote for the legislation in 1884 and 1886. The House, however, exhibited "complete inactivity" over federal aid. This was due in part to opposition by the Speaker and parliamentary

obstruction, but primarily it reflected southern opponents' "fear of the difficulty of controlling more educated Negroes."³⁰

FEDERAL AID TO EDUCATION, "THE FIRST PHASE"

After 1890, the federal aid to education issue largely died out in Congress for several decades. By this time, new growth and development in the south moderated regional income disparities and enabled the south to deal more adequately with its own educational needs. As illiteracy rates fell, the rationale for federal intervention on behalf of republican government eroded. At the same time, the Republican Party curtailed its protective activities on behalf of blacks.

The federal aid debate in the era before 1896 was clearly colored by unique circumstances of the times. However, the events of these years resulted in several important consequences that continued to shape the campaign for federal aid in the years ahead. First, the federal Bureau of Education was created.³¹ Although its role was small, it served to permanently establish a degree of federal involvement in elementary and secondary education. The federal aid struggle also created a committed education lobby. By the 1880s, educational groups like the NEA had become the principal supporters of federal aid.

Finally, the early federal aid controversy aroused fundamental issues that would continue to divide Congress until the 1960s. Central to these was the issue of federal involvement itself. Opponents viewed federal aid as an unconstitutional interference in a state and local function, "the first step in the direction of complete national control of education."³² As Lee concludes in his overview of the 1870-90 period:

Perhaps most important of all was the evidence, in Congress and public debate, of the overpowering importance of considerations of constitutionality, states' rights, and centralization or federal control. Throughout the period and on a nationwide scale, decided and determined opposition to national control of education was constantly manifested. To many, main-

tenance of local prerogative loomed far larger than educational improvement; to many more, independence from federal control was essential to that improvement.³³

The federal aid to education issue aroused a lasting religious controversy as well. Federal aid proponents at the national level commonly supported free, compulsory education at the state and local levels. Segments of the religious community, especially the Catholic Church, believed that federal aid would upset the balance between public and parochial schools. Other advocates of private education, like the presidents of Harvard and Columbia, similarly viewed federal aid as a threat to private education.

A third persistent issue to arise was race. A primary motive for federal aid throughout the Reconstruction Era was to provide for the education of southern blacks. Over time, support for highly interventionist federal policies on behalf of blacks waned. From the Perce Bill on, political necessity demanded that federal aid reconcile itself to segregated school systems in the south. But federal aid legislation continued to insist that blacks and whites benefit equitably from federal assistance.

FEDERAL AID IN THE EARLY 20TH CENTURY

Vocational education was the focus of aid to education efforts in the early years of this century. This objective was attained in 1917 with the passage of the *Smith-Hughes Act*, which established a program of federal aid to support agricultural, industrial, and home economics education at the secondary school level. Grants totalling \$1.7 million in 1917 were made to the states on a matching basis, for expenditures on teachers' salaries, curricular developments, and administrative costs in accordance with state plans. Spending on construction and facilities was prohibited. The *Smith-Hughes Act* bypassed the Office of Education and established the Federal Board of Vocational Education to administer the program.³⁴

Vocational education programs continued to grow incrementally from that point on. New authorizations and enactments were passed by

Congress in 1929, 1934, 1936, 1946, 1963, and 1968. The *George-Barden Act* of 1946 expanded vocational education programs and transferred administration of the programs to the U.S. Office of Education. Later enactments significantly increased federal spending on vocational education (see *Table 4*), reduced the early focus on agriculture, and increased emphasis on the disadvantaged.³⁵

Passage of the *Smith-Hughes Act* and the discovery of mass illiteracy during the World War I draft prompted revived interest in general aid to education. In 1919, the *Smith-Towner Bill* was introduced in Congress. It proposed creating a cabinet department of education and a program of federal aid intended to combat illiteracy and to promote physical education and the "Americanization" of immigrants.³⁶ This bill and subsequent ones were endorsed by President Wilson, the NEA, and women's groups, but such legislation never gained committee approval in Congress. After 1925, education supporters focused solely on the establishment of an education department, but this approach met with no more success. A 52-member National Advisory Commission on Education was appointed in 1929 to study the federal role in education. It recommended general aid to education in its 1931 report, but given the Depression and President Hoover's opposition to the plan, no such action was taken.

The governmental fiscal crisis created by the Depression turned the focus of federal aid advocates to emergency assistance. Proposals were made in Congress for loans or direct aid to schools, but little action occurred until many state school systems "were near collapse" in 1934.³⁷ "A rush of bills" followed, and the House Education Committee reported a bill providing \$75 million in relief to the schools.³⁸ However, concerns were expressed about emergency aid becoming permanent, and no consideration of the legislation was made by the full House. Many more emergency and permanent aid bills for the direct relief of education followed in succeeding years, but all failed to advance.

A number of New Deal programs did have an important impact on education, however. In 1934, Harry Hopkins of the Federal Emergency Relief Administration estimated that 40,000 teachers were receiving federal relief funds.³⁹

Loans to schools for the employment of teachers were approved under the Reconstruction Finance Act. School related construction projects were included in the activities of the Public Works Administration and the Works Progress Administration, and some educational

functions were performed under the Civilian Conservation Corps and the National Youth Administration programs. All of these programs were temporary, however, and they affected education only indirectly, in the performance of relief or employment objectives.

FOOTNOTES

¹See Sidney Tiedt, *The Role of the Federal Government in Education*, New York, Oxford University Press, 1966, p. 14.

²John Mathews and Clarence Berdahl, eds., *Documents and Readings in American Government*, New York, NY, MacMillan, 1928, p. 484.

³Tiedt, *op. cit.*, p. 17. The largest grants were made to western states. Alaska, alone, received approximately one-fifth of this total sum.

⁴*Ibid.* Similarly, Gordon Lee asserts that: "[F]undamental commitments to the principle . . . of federal responsibility for educational activity . . . actually antedated the adoption of the Constitution, i.e., The Ordinances of 1785 and 1787." Gordon Lee, *The Struggle for Federal Aid: First Phase, 1870-1890*, New York, Columbia University Teachers College, 1949, p. 27.

⁵Harley Lutz, representing the National Association of Manufacturers, quoted in Tiedt, *op. cit.*, p. 77.

⁶Lee, *op. cit.*, p. 11.

⁷This was apparent in the passage of the *Homestead Act*, the *Morrill Act*, the railroad land grants, and the creation of the Departments of Agriculture and (temporarily) Education.

⁸Lee, *op. cit.*, p. 2. This section is based largely on Lee's account.

⁹*Ibid.*, p. 32.

¹⁰Quoted in *ibid.*, p. 21.

¹¹*Ibid.*, p. 23.

¹²*Ibid.*, pp. 26-27.

¹³*Ibid.*

¹⁴*Ibid.*

¹⁵Quoted in *ibid.*, p. 42.

¹⁶*Ibid.*, pp. 43-44.

¹⁷*Ibid.*, p. 45. "The policy of complete nonsupport for the Hoar Bill, coupled with equally strong approval of less

extreme measures . . . was typical of most education groups." *Ibid.*, p. 46.

¹⁸Quoted in *ibid.*, p. 47.

¹⁹*Ibid.*

²⁰Article IV, section 4, which reads: "The United States shall guarantee to every state a republican form of government."

²¹Lee, *op. cit.*, p. 50.

²²*Ibid.*, p. 68.

²³*Ibid.*, p. 64.

²⁴*Ibid.*, p. 88.

²⁵Quoted in *ibid.*, p. 91.

²⁶*Ibid.*, pp. 94, 98.

²⁷*Ibid.*, p. 160.

²⁸Quoted in *ibid.*, p. 121.

²⁹Quoted in *ibid.*, p. 145.

³⁰*Ibid.*, p. 159.

³¹This later became the Office of Education.

³²Lee, *op. cit.*, p. 113.

³³*Ibid.*, p. 165.

³⁴This is an indication of the low esteem in which the Office of Education was held at the time. Following its demotion from departmental status in 1869, the office led an obscure and uncertain existence for much of its life. For years it was a bureau in the Interior Department. It was later shifted to the Federal Security Agency, and finally, to the Department of Health, Education, and Welfare (HEW) when that department was created in 1953.

³⁵On vocational education, see Tiedt, *op. cit.*, pp. 23-24; W. Brooke Graves, *American Intergovernmental Relations*, New York, NY, Charles Scribner's Sons, 1964, pp. 505-507, 522-526; and Frank J. Munger and Richard F. Fenno, *National Politics and Federal Aid to Education*, Syracuse, NY, Syracuse University Press, 1962.

³⁶Munger and Fenno, *op. cit.*, p. 5. Much of the following section is based on their work.

³⁷*Ibid.*, p. 6.

³⁸*Ibid.*

³⁹*Ibid.*

The Contemporary Period: Categorical Assistance And The Drive For General Aid

With the failure to obtain temporary federal assistance to schools in the 1930s, federal aid supporters sought once more to secure a program of general aid to education. These efforts launched the modern drive to achieve broad, large-scale federal aid to education that finally resulted in the passage of the *Elementary and Secondary Education Act (ESEA)* in 1965.

The first move back to general aid to education was a bill introduced in Congress in 1936 by *Sen. Pat Harrison (D-MS)* and *Rep. Brooks Fletcher (D-OH)*. Senate hearings were held on the bill in 1937, after which it was unanimously approved by the Senate Education and Labor Committee. It was withdrawn when President Franklin Roosevelt referred the proposal to his newly appointed Advisory Committee on Education. The committee recommended legislation combining general aid to education with a number of special categorical aid programs, and this was accepted in the Senate Committee as the *Harrison-Thomas bill*. However, President Roosevelt's opposition to the committee's recommendation and to the Senate bill was expressed in testimony by the Director of the Budget Bureau.¹ The basis for Roosevelt's opposition apparently was his preference that federal aid be limited only to states unable to provide sufficient education for their own citizens.²

Although it would soon become one, general

aid to education was not a major partisan issue at this time. The Democratic Party platform did not endorse federal aid until 1944, when it stated: "We favor federal aid to education administered by the states without interference by the federal government."³ In contrast, the 1940 Democratic Platform stated only that: "We shall continue to bring to millions of children, youths, and adults, the educational and economic opportunities otherwise beyond their reach." For their part, the Republicans did not mention aid to education in contemporary platforms until 1948.

The only federal aid program to pass at this time was the *Lanham Act of 1941*. This provided federal payments in lieu of taxes to local school districts affected by World War II military mobilization. Funds under the act were available for school construction, auxiliary services, and nursery schools.

When the general aid issue was raised in Congress in 1943, it achieved somewhat more success. The Hill-Thomas Bill was approved by the Education and Labor Committee and considered on the Senate floor. It was the first general aid bill to advance that far since 1890, but it quickly became enmeshed in racial controversy. The legislation contained an NAACP supported provision requiring that federal assistance be equitably divided by the states between black and white schools where segregation was maintained. However, the bill lost its southern support and died when an amendment was added requiring that such states equitably apportion their own funds between segregated schools in order to qualify for federal aid. The amendment was successfully opposed by the NAACP itself because it jeopardized federal assistance.

Similar legislation was introduced into the Senate in 1945, but two important developments significantly altered its reception. First, the legislation was cosponsored by Sen. Robert Taft of Ohio, an influential Republican. Taft had opposed federal aid in 1943 because he believed it would entail federal controls. He had argued then that, because an important goal of the legislation was equalization of educational spending, it would logically follow that recipient states should equalize their own education expenditures: "... certainly if the purpose of the federal subsidy is equalization, then we

must necessarily impose federal regulation which will bring about equalization."⁴

By 1945, Taft had altered his position. He had become convinced that federal aid to education was a necessary and useful program.⁵ Moreover, Munger and Fenno attribute his change, in part, to a belief that the Office of Education could be trusted not to interfere with the educational activities of state and local governments:

The record of the federal Office of Education has been very good. It has relied almost entirely on state boards of education. It has a history of not interfering in any way with their administration and of conducting a very simple operation.⁶

Finally, the Thomas-Hill-Taft Bill provided essentially "flat" grants to the states, rather than equalizing grants, thus removing this basis for federal intervention.⁷

The flat grant formula reflected the NEA position on the distribution of federal aid because it appealed to the organization's broad constituency. However, it inspired the second important development affecting the 1945 education legislation—a major split between the two largest teacher organizations. The American Federation of Teachers (AFT) promoted a separate bill in 1945, and again in 1947 and 1949. It contained a more equalizing formula, a requirement that 75% of federal aid be spent on teachers' salaries, and assistance to parochial schools. This legislation divided the education community and raised the religious issue once again.⁸ Both developments weakened support for federal aid.

Despite these difficulties, the Thomas-Hill-Taft Bill was approved by the Senate Committee in 1946. It was reintroduced in 1947 and passed by the Senate in 1948. Federal aid legislation introduced in the House had not yet cleared the Education and Labor Committee. When the Senate passed the bill again in 1949, however, it appeared that the House might finally grant approval to a federal aid bill. Support had grown in the Democratic Party in recent years. The party platform expressed support for federal aid in 1944 and 1948, and President Truman supported it in his 1948 budget.

The World War II draft had again dramatized the problem of illiteracy, and the post-war "baby boom" was beginning to exert pressure on the nation's school systems.

However, the House Committee was much *more divided over the federal aid issue than* was the Senate Committee. The chairman of its Special Subcommittee on Federal Aid to Education, Graham Barden (D-NC), was conservative and essentially opposed to any federal aid proposals. "A Democrat in name only," one Democratic member of this committee described him.⁹ Barden rejected the Senate proposal and introduced his own bill, eliminating state reports on federal aid expenditures and expressly prohibiting any assistance to parochial schools. This latter possibility had been left open to the states by the Senate bill in such supplementary areas as school transportation and textbooks.

Possibly by design, the parochial aid provision created an uproar of controversy that *killed the legislation. Many liberal Democrats* from Catholic constituencies refused to support the bill, including the chairman of the full Education and Labor Committee, John Lesinski (D-MI), who called it "anti-Catholic," "bigotry."¹⁰ Lesinski added: "It is my opinion that he [Barden] drew it up that way purposely because he didn't want any aid to education and wanted to kill it."¹¹ Munger and Fenno explain that:

The controversy exploded into dramatic national headlines when Mrs. Eleanor Roosevelt criticized Francis Cardinal Spellman of New York City for precipitating the religious conflict and the Cardinal replied: "[Y]our record of anti-Catholicism stands for all to see..." and described her newspaper columns as "documents of discrimination, unworthy of an American mother." The bill never emerged from the full House Committee.¹²

Attempts to resolve the issue over the next two years failed as crosscutting issues effectively divided federal aid supporters. To some extent, the purpose of federal aid became an issue in itself. Distribution of aid to the states on a population basis weakened the rationale

for federal involvement. Yet, some aid supporters from poor districts in the north could not support equalizing formulas that discounted such localized need and sent aid predominantly to the southern states. Essentially, *however, the deep religious controversy that had been aroused over aid to parochial schools caused the greatest problems.* It proved so contentious and disruptive that Congressmen sought to avoid the issue altogether. Thus, for the next ten years, Congressional attention turned from the question of general aid to narrower proposals.

IMPACT AID

This process began in 1950 with the passage of two laws providing federal assistance to "areas affected by federal activities." The concept, which had been established under the *Lanham Act of 1941*, was contained in Public Laws 815 and 874, providing construction and operating grants respectively. *The programs appealed to Congress in several ways.* The rationale for federal involvement was very clear, at least in principle. Large federal installations, such as military bases, may add to local demand for services without contributing to the local tax base. Thus, even staunch conservatives and general aid opponents have supported the program as a payment in lieu of taxes.¹³ Moreover, impact aid has had strong defense overtones, since military installations were a prime stimulus of the program. Importantly, the act was passed during the Korean War. The program has also had important "pork barrel" aspects which have heightened its appeal to Congress. These have grown to the point that, by 1970, 385 of a total 435 Congressional districts contained schools receiving impact aid funds. Finally, school districts like the program and have fought to enlarge it. Districts which receive funds compare it to a program of general aid to education; there are virtually no federal strings attached to local use of the money.

Since their initial passage, the impact aid laws have been popular but controversial programs. They grew rapidly through the 1950s, when the number of eligible school districts more than doubled and the amount of federal grant money increased six times, from almost

\$30 million in 1950 to \$178 in 1959 (see Table 6). Impact aid continued to grow rapidly throughout the next decade as expenditures reached over \$650 million in over 4,500 school districts by 1970.¹⁴ The program's "immense political appeal"¹⁵ in Congress and among educators has been responsible for this growth. However, the program has been criticized by every President from Eisenhower to Carter, and it was literally embattled during the Nixon years. All have criticized the program's massive distribution of funds without reference to need and its loose definition of federal impact. For example, a study of federal aid equalization found that the impact aid construction program "has no fiscal equalizing tendencies," while the maintenance program often "serves as a large subsidy for the more wealthy."¹⁶

FEDERAL AID FOR SCHOOL CONSTRUCTION

Throughout the 1950s, subsequent attempts to achieve a major federal aid program focused on federal assistance for school construction. This was a Congressional strategy which allowed federal aid supporters to avoid the controversy and deadlock of religious issues. Unlike general aid, which might be spent on a variety of auxiliary educational activities, no one advocated including parochial schools in a federal construction program. This was assumed to be unconstitutional.¹⁷ Moreover, building construction, which is necessarily a short-term and concrete activity, seemed to be an area where federal intervention would be unlikely to entail federal controls.

Another factor adding to its political appeal was that construction aid concentrated on the

most visible component of what aid supporters argued was an educational crisis. The post-war "baby boom" had created a population bulge that was enrolling in elementary school during the early 1950s. This resulted in substantial classroom shortages. The Office of Education estimated that there was a national shortage of 370,000 classrooms in 1954.¹⁸ Responding to this shortage was difficult and burdensome for many local communities who looked for federal assistance.

Educational interest groups at first retained their commitment to general aid. They accepted this Congressional initiative to break the federal aid deadlock only with reluctance. As construction aid became the central issue of the 1950s, however, they reconciled their objectives with reality. No sooner was this accomplished to quiet the religious issue than racial controversy returned with a fury. Along with the continuing opposition of some to any program of major federal aid, division over racial questions succeeded in blocking Congressional action.

A construction aid proposal was introduced in the Senate in 1949, after the failure of general aid had grown apparent. Hearings were then held in both the Senate and the House. The provision was given a boost during the 1952 election campaign when candidate Dwight Eisenhower endorsed federal aid for classroom construction during a television address.¹⁹ Upon election, however, President Eisenhower advocated only "Congressional study" of the school problem.²⁰ The following year, 1954, he proposed creation of the White House Conference on Education to further study the issue, and he decided to await the recommendations of this conference and those of the Commission on Intergovernmental Relations before acting. The Republican-controlled Congress took no action in 1953. The Labor and Public Welfare Committee passed a construction aid bill in 1954 that failed to reach the Senate floor.

In 1955, the Administration did propose a bill, focusing largely on federal loans and loan guarantees for local school construction. Democratic activists and education groups supported a much larger program of federal grants, but racial issues arose to confound them. Following the Supreme Court decision to outlaw school segregation in *Brown v. Board of Educa-*

Table 6

PUBLIC LAW 874, 1950-51 AND 1959-60

Program Characteristic	1950-51	1959-60
Number of Eligible Districts	1,172	3,821
Number of Federally Connected Pupils	512,050	1,502,432
Net Entitlements of Eligible Schools	\$29,700,000	\$177,800,000

SOURCE: W. Brooke Graves, *American Intergovernmental Relations: Their Origins, Historical Development, and Current Status*, New York, NY, Charles Scribner's Sons, 1964, p. 558.

tion in 1954, the National Association of Colored People (NAACP) altered its position on federal aid. Previously, it had supported federal aid proposals that equitably apportioned aid between segregated schools. Now, it advocated that states conform to the *Brown* decision in order to qualify for aid. This was enough to kill the bill in the Senate where Committee Chairman Lister Hill (D-AL) shelved the legislation.

A construction aid bill did advance in the House, despite delaying tactics there by another southern committee chairman, Graham Barden (D-NC). Known as the Kelly Bill, this proposal was a compromise which added construction grants to the Administration's loan program. It passed the committee in 1955 after an antisegregation amendment by Rep. Adam Clayton Powell (D-NY) was defeated. Education and labor groups, major Democratic Party figures, and President Eisenhower all opposed the Powell Amendment as an obstacle to the education bill. Powell argued, however, that the Supreme Court had fundamentally altered the situation for considering federal aid to education:

Negro people have waited many, many years for this hour of democracy to come and they are willing to wait a few more years rather than see a bill passed which will appropriate federal funds to build a dual system of Jim Crow schools in defiance of the law.²¹

Before it reached the House floor in 1956, the aid bill was given a surprising boost by the Administration's Conference on Education, which supported federal aid. But the legislation was killed when the Powell Amendment was adopted on the floor. Conservative aid opponents, hoping to cripple the bill, were joined by liberal Republicans and "overwhelming" numbers of large city Democrats in supporting the Powell Amendment. Despite their support for federal aid and the pleas of Democratic leaders and education groups, liberals supported the amendment as a moral issue. The NAACP had proclaimed in that election year that: "Any vote against the Powell Amendment is a vote in favor of segregation."²² Defeat of the bill was assured when the Administration

withdrew its support of the compromise following defeat of another amendment to equalize its formula. This removed any hope of obtaining enough Republican support to offset the total opposition of the south, and the bill died.

Similar legislation advanced in Congress the following year. President Eisenhower continued to voice support for temporary construction aid during the 1956 election, and he announced at the NEA convention in April 1957: "It is my firm belief that there should be federal help to provide stimulus to correct an emergency situation."²³ The Administration's proposal again differed from that of Congressional Democrats, once more providing less money and a more equalizing formula. However, Department of Health, Education, and Welfare (HEW) Assistant Secretary Elliot Richardson established a compromise with the House Education Subcommittee, which was approved by a strong bipartisan majority of the full committee.

The fragile coalition supporting this bill once again collapsed on the House floor. The Chamber of Commerce launched a successful campaign challenging the need for federal assistance. It argued that state and local governments were successfully dealing with their own educational needs. More importantly, the "marked" absence of straightforward Presidential endorsement of the compromise bill produced doubts of genuine Presidential support.²⁴ Last minute maneuvers by Republican and Democratic leaders to assuage these doubts failed, and the legislation once again died, by a vote of 208-203. A flurry of bitter charges and recriminations followed.

THE NATIONAL DEFENSE EDUCATION ACT, A NEW PROGRAM OF SPECIALIZED FEDERAL ASSISTANCE

The deadlock in the struggle for educational assistance was broken temporarily by the passage of the *National Defense Education Act* (NDEA) in 1958. The NDEA was a large and multifaceted law composed of numerous programs of specialized aid, all focusing mainly on the improvement of math, science, and foreign language instruction. The bill's success grew

out of the atmosphere of national crisis aroused by the successful orbit of the Soviet Sputnik satellite. Its programs were tailored by Administration and Congressional legislative craftsmen to ride the resulting wave of public concern over the nation's education system.

"I ask you, sir, what are we going to do about it?"²⁵ This, quotes James Sundquist, was the opening question at President Eisenhower's news conference following the Russian orbit of Sputnik. He notes: "The President's response that day did not mention education."²⁶ However, upgrading the nation's system of scientific education soon became the focus of policy response.

Elements of what became the NDEA were in various stages of development when Sputnik occurred. Years before, President Eisenhower had indicated support for federal scholarships to increase the production of American scientists and engineers. A 1956 Library of Congress study urged the same, and Congressional hearings on the subject were underway at the time of Sputnik. At the same time, recommendations by the President's Committee on Education Beyond the High School were being studied by an HEW task force. The task force, headed by Commissioner of Education Lawrence Derthick, proposed a program of high school guidance and counseling to identify talented students and a program of federal scholarships to aid them. State grants for the improvement of high school science and math instruction were added later. Under the guidance of HEW Secretary Marion Folsom and Assistant Secretary Elliot Richardson, these became the basis for the Administration's response to the Sputnik crisis. That bill, called the "Education Development Act of 1958," was introduced in Congress in January 1958.

Meanwhile, similar proposals were being developed on Capitol Hill, where concerted efforts were underway to avoid the fatal controversies of prior federal aid legislation. Lister Hill (D-AL), the Chairman of the Senate Labor and Public Welfare Committee and an ardent supporter of federal aid, accepted staff advice that Sputnik be utilized to launch a new aid to education effort. National defense was made a rationale for the legislation, although Sundquist suggests this was rather disingenuous: "In accepting the title 'national defense education

act,' Hill observed that his colleagues would not dare vote against both national defense and education when joined in the same bill."²⁷

Favored elements from the Administration's forthcoming bill were joined with other Congressional proposals to form an attractive legislative package. The categorical approach to federal aid was adopted in order to minimize opposition to the bill. Hill instructed his staff to draft legislation which would avoid, "the Scylla of race and the Charybdis of religion."²⁸

The Administration's bill and the Hill-Elliot Bill were similar, and Congressional leaders worked closely with HEW in negotiating their differences. Both included major scholarship programs and other assistance for higher education, which focused loosely on stimulating the "defense-related" fields of math, engineering, and foreign languages. In elementary and secondary education, each bill authorized state matching grants to improve high school guidance and counseling, and each provided aid to states for enhancing instruction in the defense-related fields.

Congressional debate centered on scholarships for higher education. These were eventually replaced by loans. Beyond this, the political climate and strategy helped to minimize other obstacles. General aid proponents, like the NEA, were disappointed by the size and scope of the measure. Staunch aid opponents, such as Barry Goldwater, opposed the NDEA. They feared that it, like general aid, would soon lead to federal controls: "If adopted, the legislation will mark the inception of aid, supervision, and ultimately control of education in this country by federal authorities."²⁹ Neither extreme proved successful, however, as the religious and racial issues were muted. Parochial school advocates won addition of a small program of loans to private schools. Antisegregation forces were dissuaded from pressing their cause on the popular and specialized education bill. Thus, skillful leadership and an atmosphere that favored action enabled the bill to "breeze" through both Houses of Congress. In the always difficult House, 30 southern and border Congressmen supported the bill, and Republicans split almost evenly.

Although limited, the NDEA was an important piece of legislation. It demonstrated

Table 7

FEDERAL FUNDS FOR ELEMENTARY AND SECONDARY EDUCATION, FISCAL YEARS 1957-60

Fiscal Year	1957	1958	1959	1960
Millions	\$128.3	\$139.7	\$170.7	\$224.9

SOURCE: Congressional Quarterly, *Congress and the Nation*, Volume 1: 1945-1964, Washington, DC, Congressional Quarterly Service, 1965, p. 1199.

that, under certain circumstances, Congress could enact a major aid to education bill. Moreover, it established a new federal purpose in education:

The Congress hereby finds and declares that the security of the nation requires the fullest development of the mental resources and technical skills of its young men and women. . . . The national interest requires . . . that the federal government give assistance to education for programs which are important to our national defense.³⁰

The act also accounted for a major increase in federal spending on elementary and secondary education. Primarily due to the NDEA, federal spending on education (excluding impact aid and the school lunch and milk programs) rose from about \$140 million before enactment to \$225 million thereafter (see Table 7).

Included in this package of NDEA programs were:

- **Title III:** matching grants to public schools and ten-year loans to private schools for science, math, and foreign language equipment; authorization—\$75 million/year; total outlays from 1959-61—\$109 million in grants, \$2 million in loans; \$6 million to state supervision and services.
- **Title V:** grants to state education agencies (SEAs) for establishment and maintenance of high school programs of guidance and counseling; authorization—\$15 million/year; outlays 1959-61—\$36 million.

- **Title VI:** foreign language training for elementary and secondary school teachers; authorization—\$7.25 million; three-year outlays—\$9.5 million.³¹

Also included were vocational education grants to states to train skilled teachers and aid to colleges and students to improve the training of elementary and secondary teachers in defense related fields.

Senate Majority Leader Lyndon Johnson called the act “an historic landmark.” Sundquist agreed,

. . . not so much because of the specific provisions of the NDEA but because of the psychological breakthroughs it embodied. It asserted, more forcefully than at any time in nearly a century, a national interest in the quality of education that the states, communities, and private institutions provide.³²

FEDERAL AID AND PRESIDENTIAL POLITICS, 1959-60

School aid politics became strongly more partisan when considerations of general aid began once more in 1959. The fragile bipartisan compromises over construction aid in 1956 and 1957 dissolved with the approach of the 1960 Presidential contest. Despite this, the House passed a federal aid bill in 1960 for the first time in almost 90 years. It appeared then that federal aid to education might finally be enacted. But structural obstacles in Congress again combined with divisive issues to thwart the legislation.

The process commenced immediately in 1959. The complexion of Congress was considerably more liberal following the influx of northern and western Democrats in the 1958 election. The Eisenhower Administration, on the other hand, assumed a much more conservative stance in its fiscal 1960 budget. Sharply limiting spending on new social programs, it proposed only a very modest program of long-term loans for school construction.

This met immediate and total rejection by Congressional Democrats, who sensed an election issue at hand, and by the NEA which had never been fully satisfied with even a large

construction aid program. Sundquist reports that:

The majority of Congressional Democrats had, by this time, joined in open alliance with the NEA. . . . [T]he NEA's bill for a multibillion dollar program of aid for school construction and teacher salaries . . . was rapidly achieving the status of a party program measure among northern and western Democrats.³³

A \$1 billion version of this bill passed the House Education and Labor Committee on a party-line vote. Supporters knew it was unacceptable to the Administration and the conservative House Rules Committee, but it served tactically to raise electoral interest and allow negotiating room.³⁴

Senate education supporters remained wary of raising religious controversy again through broader legislation. A construction aid bill passed the Senate Committee in 1959 despite NEA dissatisfaction. When it reached the Senate floor, Democratic leaders offered a general aid substitute that produced a tie vote along party lines. Vice President Richard Nixon was forced to break the tie and, thus, vote against teachers' salaries in an election year. A scaled-back version of the salary and construction aid bill was then passed by the Senate. With it came a new rationale for federal involvement. By 1960, the need for "emergency" school construction aid had lost considerable urgency. After all, education had survived for a decade without federal aid. Accordingly, the federal role in this legislation was envisioned to be a continuing, long-term contribution to educational improvement.³⁵

For practical reasons, however, the House Education Committee had returned to the emergency construction formula. Although received in partisan terms, this was able to pass the major procedural hurdle by a one-vote margin in the House Rules Committee. It subsequently became the first large-scale, aid to education bill to pass the House of Representatives since 1872. The Powell Amendment prohibiting aid to segregated schools was again attached to the legislation, but the influx of liberal Democrats proved sufficient to pass the

bill regardless. Prospects for a compromise House-Senate conference bill appeared good at this point, with the House dropping the Powell Amendment and the Senate dropping teacher salaries. However, the bill died an unusual death when the Rules Committee reversed itself and refused to clear the legislation for conference.

Presidential politics were blamed for this. Republicans were reluctant to have the bill vetoed in an election year, and the President gave no assurance that he would sign it. The NEA and some liberals, meanwhile, lost enthusiasm for a bill without teacher aid and, "preferred a campaign issue to a watered down bill."³⁶ As one Democrat complained later of the NEA:

They are very disappointing. They want the moon. Their attitude is that they might as well try a big bite and go down fighting rather than to establish a new area of federal responsibility in a small scale reasonable way. . . . They're the worst, most ineffective lobby around.³⁷

As expected, the issue of federal aid to education did become an important issue in the 1960 Presidential campaign. In campaign speeches, John Kennedy attacked Nixon's tie-breaking vote. Nixon defended his actions in the first televised Presidential debate, explaining: "When the federal government gets the power to pay teachers, inevitably . . . it will require the power to set standards and to tell teachers what to teach."³⁸ For its part, the NEA made clear where its sympathies lay, without endorsing Sen. Kennedy directly. Thus, the issue was clearly drawn during the election, although it is impossible to determine whether it had any importance in determining peoples' Presidential choices. If it did, no popular mandate was expressed, given the extremely close election. Public opinion polls at the time, however, showed clear popular support for the general concept of federal aid.³⁹

MORE YEARS OF FAILURE— FEDERAL AID CONTROVERSIES, 1961-64

There is no "end . . . in sight."⁴⁰ Thus, Mun-

ger and Fenno concluded their study of the struggle for federal aid up to 1961, surveying the dismal past and speculating on the future. Rarely do cautious social scientists commit themselves so fully in predictions, but rarely have they had such strong basis for doing so.

When the Kennedy Administration entered office, the hopes of federal aid supporters were running high, and with good reason. For the first time in history, federal aid to education was a top priority of the President. The Kennedy Administration assumed active leadership of the effort to achieve a general aid bill. In addition, the House had passed an aid to education bill the year before—for the first time in almost 90 years. Finally, the Rules Committee, which had been the principal institutional obstacle in 1960, had been enlarged and liberalized through the efforts of Congressional leaders and the Administration.

The Administration submitted a permanent, multibillion dollar bill for salary and construction assistance that was similar to the one the Senate had passed in 1960. In hope of giving it wider appeal, the formula was broadened somewhat, and the bill was tied to impact aid renewal. The major alteration, however, was that aid for parochial schools was explicitly denied. This proved to be momentous. As the first Catholic President, Kennedy felt unable to compromise on an issue so emotionally volatile. As Sundquist observed: "Kennedy's Catholicism had been the single most important issue" in the campaign.⁴¹

This provoked a bitter reaction from the Catholic hierarchy which sparked, in turn, a resurgence of religious controversy of great magnitude. The issue had been relatively quiescent during the 1950s, as long as policy centered on temporary aid for construction alone. *The prospect of a permanent, massive infusion of federal aid, however, raised "the stakes . . . and the church moved rapidly to rally its political power."*⁴² In an attempt to head off Catholic opposition, White House aide Theodore Sorensen and HEW Secretary Abraham Ribicoff negotiated with church leaders on a compromise. The Administration offered to expand the equipment loan sections of the NDEA to include construction loans for parochial schools. However, the church became "locked in" to its demands for a major program of low

interest loans for parochial schools. The vehemence of its demands and the controversy thus created rapidly produced a similar inflexibility among parochial aid opponents. The issue had been revived in full force, and members of Congress were barraged with "hundreds of thousands of constituent messages."⁴³

This did not prevent the Senate from acting favorably on the bill, however. The Senate was traditionally the more hospitable branch for federal aid programs. A solid core of northern and western Democrats was committed to a federal aid bill, and Senators, in general, had broader religious constituencies and thus more flexibility on the issue. Wayne Morse (D-OR), a long-time federal aid supporter, skillfully maneuvered the public aid and expanded NDEA bills through the Senate, avoiding racial issues along the way.

It was the House that assumed, once again, its classic role as graveyard to federal general aid legislation. The Education and Labor Committee advanced the legislation over unanimous Republican opposition, but the Rules Committee voted to delay action until the NDEA proposal arrived. Despite its enlargement, the Rules Committee remained a difficult hurdle for aid to education measures. Republicans and southern Democrats, adamantly opposed to any general aid, comprised a near majority, while federal aid supporters were deeply divided over religious issues. When the NDEA bill arrived, with its parochial school loans, the expected committee approval of general aid did not follow. One parochial school supporter, Rep. James Delaney (D-NY), refused to back the compromise, and it failed in committee by one vote.

Far from representing simple obstruction, however, Sundquist suggests that the Rules Committee action reflected considerable pressure from Congressmen, who were reluctant to take a public stand on the extremely divisive issue: "Many members were happy to be relieved of the responsibility of recording their votes on the two bills. . . . [C]ongressmen were shaking Delaney's hand for hours afterward."⁴⁴ With the failure of general aid, a hasty version of the old Kelly construction aid proposal was resurrected. Munger and Fenno called it an "artful contrivance for the capture of 51% of the votes."⁴⁵ It included the reauthorization

of impact aid in an attempt to hold that popular program hostage. But Republicans overwhelmingly rejected it as a subterfuge, and it was badly defeated on a parliamentary maneuver designed to circumvent the Rules Committee.

Fallout from the 1961 experience was long lasting. Although the Administration resubmitted its proposals the next year, Congress took no action on them. As Sundquist observed: "nobody had any stomach for another round of religious warfare."⁴⁶ *Congressional Quarterly* announced in 1962 that: "Several education aid backers said they felt that the entire subject was dead for the foreseeable future."⁴⁷ Overlooked in this prediction, however, was the possibility that experience might produce fundamental attitudinal changes on the part of major participants in the educational aid debate. It was abundantly clear that refusal to compromise would mean that no large-scale aid program would succeed. Sundquist writes that:

For the leadership on all sides—Catholics, Protestants, NEA, tacticians in the Administration and in Congress—and for supporters of school aid among the general public, the 1961 debacle was a chastening ordeal from which

they gained both wisdom and humility.⁴⁸

One manifestation of this new posture was greater utilization of the categorical aid approach. This was part of a "strategy of subtraction, dropping off controversial features of [a] bill to minimize opposition."⁴⁹ It had nearly succeeded with the construction aid approach of the 1950s, and it proved successful with the NDEA.

Accordingly, the Administration bill introduced in 1963 was an omnibus collection of special aid proposals. It included scholarships and construction aid for colleges, and programs for libraries, adult education, and vocational education at the elementary and secondary level. General aid was even cast in a new light, intended as "selective" aid for areas of need identified by the states.

The Congress broke the large bill down into component parts and focused on the most attractive and least controversial sections. College construction aid was passed in 1963, along with vocational education. The next year NDEA was extended, with its institutional equipment provisions broadened to include English, reading, history, geography, and civics as "defense related" fields. The stage was then set to focus on a broader aid bill.

FOOTNOTES

¹Munger and Fenno, *op. cit.*, p. 101.

²*Ibid.*

³Quoted in Donald B. Johnson and Kirk H. Porter, eds., *National Party Platforms, 1890-1972*, Urbana, IL, University of Illinois Press, 1973, pp. 403, 387.

⁴Quoted in Munger and Fenno, *op. cit.*, pp. 53-54.

⁵*Congressional Quarterly, Congress and the Nation, Volume I: 1945-1964*, Washington, DC, Congressional Quarterly Service, 1965, p. 1202.

⁶Quoted in Munger and Fenno, *op. cit.*, p. 84.

⁷Flat grants are based on population rather than need.

⁸For instance, the AFT referred to the NEA legislation as "the bosses bill" because the NEA included school administrators as well as teachers in its membership.

⁹Quoted in Munger and Fenno, *op. cit.*, p. 122.

¹⁰Quoted in *ibid.*, p. 126.

¹¹Quoted in *ibid.*

¹²*Ibid.*, pp. 10-11.

¹³Sidney Tiedt, "Historical Development of Federal Aid Programs," in Roe L. Johns, Kern Alexander, and Dewey Stollar, eds., *Status and Impact of Educational Finance Programs, National Educational Finance Project Volume IV*, Gainesville, FL, National Educational Finance Project, 1971, pp. 226-227.

¹⁴See Table 4, above, and Lucille Eddinger, "Federal Aid for 'Impacted Areas' Still Holds Vast Political Appeal," *National Journal*, Washington, DC, January 31, 1970, pp. 217-218.

¹⁵*Ibid.*

¹⁶Edgar Bedenbaugh and Kern Alexander, "Financial Equalization Among the States from Federal Aid Programs," in Johns, Alexander, Stollar, eds., *op. cit.*, pp. 268, 280.

¹⁷In a divided opinion in 1947, the Supreme Court upheld a state law permitting school districts to reimburse parents of parochial as well as public school students for bus transportation to school. The doctrine appeared to be that parochial school participation in some supplemental services would be upheld, but clearly not direct federal aid to such schools. *Everson v. Board of Education*, 330 U.S. 1.

¹⁸Graves, *op. cit.*, p. 556.

¹⁹James Sundquist, *Politics and Policy*, Washington, DC, Brookings Institution, 1968, p. 155. This section rests heavily on his account.

²⁰*Ibid.*, p. 157.

²¹Quoted in *ibid.*, pp. 165-166.

²²Sundquist argues that such antisegregation position-taking by members of Congress on the Powell Amendment was increased because a comprehensive civil rights act had been delayed; this removed an alternative opportunity for expressing views on racial policy. *Ibid.*, p. 169.

²³Quoted in *ibid.*, p. 170.

²⁴*Ibid.*, p. 171.

²⁵Quoted in *ibid.*, p. 173.

²⁶*Ibid.*, p. 174.

²⁷*Ibid.*, p. 176.

²⁸Quoted in *ibid.*

²⁹Quoted in *ibid.*, p. 178.

³⁰PL 85-864, section 401. The section adds, however, that: "The Congress reaffirms the principle and declares that the states and local communities have and must retain control over and principal responsibility for public education."

³¹*Congressional Quarterly*, *op. cit.*, p. 1201.

³²Sundquist, *op. cit.*, p. 179.

³³*Ibid.*, p. 182.

³⁴Munger and Fenno, *op. cit.*, p. 134.

³⁵Sundquist, *op. cit.*, p. 185.

³⁶Munger and Fenno, *op. cit.*, p. 165.

³⁷Quoted in *ibid.*, p. 166.

³⁸Quoted in Sundquist, *op. cit.*, p. 187. Compare this to the

1960 Republican Platform, which endorsed construction aid but proclaimed: "Primary responsibility for education must remain with the local communities and the state. . . . Any large plan of federal aid to education, such as direct grants for teachers' salaries, can only lead ultimately to federal domination and control of our schools." Quoted in Munger and Fenno, *op. cit.*, p. 98.

³⁹See Philip Meranto, *The Politics of Federal Aid to Education in 1965: A Study in Political Innovation*, Syracuse, NY, Syracuse University Press, 1967, p. 43.

⁴⁰Munger and Fenno, *op. cit.*, p. 170.

⁴¹Sundquist, *op. cit.*, p. 188.

⁴²*Ibid.*, p. 189.

⁴³*Ibid.*, p. 192.

⁴⁴*Ibid.*

⁴⁵Munger and Fenno, *op. cit.*, p. 168.

⁴⁶Sundquist, *op. cit.*, p. 193.

⁴⁷Quoted in *ibid.*, p. 205.

⁴⁸*Ibid.*, p. 195.

⁴⁹Munger and Fenno, *op. cit.*, p. 179.

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Passage Of The Elementary And Secondary Education Act: The Long Awaited Triumph

The long awaited breakthrough in federal aid to education was finally achieved with the passage of the *Elementary and Secondary Education Act (ESEA)* in 1965.¹ The act began a new era in federal aid to education, doubling the federal share of elementary and secondary education expenditures and establishing a new pattern of intergovernmental relationships in education. Programs to aid the educationally disadvantaged, provide instructional materials, *promote educational innovation*, support educational research, and assist state education agencies were all established by ESEA.

The act was the product of complex political circumstances. Throughout the long history of the struggle for federal aid, Congress had been the traditional focus of activity. Yet, ESEA was plainly the product of executive initiative, part of a broad Presidential agenda to combat poverty. The 1964 elections played a crucial role in the passage of the legislation, but this electoral role was an indirect one that complemented executive brokerage. 1964 also witnessed passage of the *Civil Rights Act*, which silenced many of the racial controversies that had plagued earlier education proposals. Finally, to a considerable extent during its passage, ESEA was treated politically as though it provided general aid to education, yet its categorical character carried great implications for its later implementation.

POLICY INITIATION

The conceptual roots of ESEA can be traced to two developments that occurred in 1964. One was the introduction of legislation by Sen. Wayne Morse (D-OR) to add poverty and unemployment rates to the impact aid program formula. The so-called Morse-Dent Bill was opposed by the Johnson Administration during hearings in 1964; but, with the War on Poverty it played an important role in making the educationally disadvantaged a legitimate federal concern in education.

The second precursor of ESEA was the 1964 Presidential Task Force on Education, one of many task forces created by President Johnson to prepare legislative proposals for his next term in office. It was headed by John Gardner, then chairman of The Carnegie Foundation and later Secretary of HEW. The task force report was not the central source of ideas later drafted into ESEA,² nor did it resolve the political obstacles confronting federal aid. However, it did lend legitimacy to subsequent federal aid legislation by recommending a poverty focus for such assistance and urging federal promotion of educational change.

By late 1964, President Johnson had decided to make federal aid to education a top domestic priority for 1965. The President argued in his subsequent education message that, "Poverty has many roots, but the taproot is ignorance."³ The major task of initiation was performed under the leadership of Francis Keppel, then U.S. Commissioner of Education. All knew that the primary obstacle would be to resolve the church-state issue in federal aid. As one Congressman put it: "We were all sensitive to the start of another holy war. Politically, not many of us can afford a religious war—at least those of us from two-religion districts."⁴ Keppel assumed responsibility for developing a proposal that would do this, along with Douglass Cater and Lawrence O'Brien of the White House staff and the planning staffs of OE, HEW, and the Gardner Task Force.

Eidenberg and Morey write that: "... [T]he heart of the process that produced the elementary and secondary legislative formula was... a series of meetings and informal negotiations involving the principal groups and

forces that had contended over federal aid in the past."⁵

The main participants included representatives of the U.S. Catholic Conference (USCC) and the NEA.⁶ Commissioner Keppel was in an excellent position to work with these major interests, having developed good relations with them on previous legislation. Key Democrats from Congress were consulted in the early stages of discussion, but the premise of the negotiations was that: "The actions Congress would be likely to take in this [church-state] area [would be] closely tied to what these groups would accept or reject in any proposed bill."⁷

The negotiations produced a number of "understandings" among the interest groups which formed the basis of the education legislation. The key breakthrough was acceptance of the "child benefit" concept. Federal aid was to focus on educationally disadvantaged children in both public and parochial schools; it was not to be considered aid to the school itself. This principle was embodied in Title I of ESEA, which distributes federal funds directly to local school districts according to a formula based on average state expenditures on education and the number of school-age children from low income families. Local districts become eligible for this portion of aid upon state approval of their program to address the needs of educationally deprived children. This includes local arrangements to involve private school students through "child benefit" and "shared services" programs.

Title I accounted for five-sixths of initial ESEA authorizations and was, in the words of Bailey and Mosher: "... an ingenious balance of power among levels of government, an interweaving of specific and ambiguous program parameters, and a mingling of short and long-range objectives."⁸ They add, however, that: "it alone would fully satisfy neither the Administration's policy objectives nor the concerns of all interest groups."⁹ Thus, it was supplemented by four additional titles that addressed other aims in different ways:

- **Title II**—School Library Resources, Textbooks and Other Instructional Materials: provided grants to states, on the basis of total school enrollments, for instruc-

tional materials for public and private school students and teachers. All materials must be approved for use in the public schools. The Commissioner of Education was authorized to direct states' programs where state law prohibited its involvement in parochial schools.

- **Title III—Supplementary Educational Centers and Services:** this title was designed to promote innovative educational programs. Services provided included special educational centers to supplement regular school programs, guidance and counseling, and special instructional equipment. Project grants were made directly by the Office of Education (OE), but with approval of the state educational agency (SEA) required.
- **Title IV—Educational Research and Training:** authorized grants to universities and other organizations to conduct and disseminate educational research.
- **Title V—Strengthening State Education Agencies:** authorized grants to states to improve statewide planning, educational data, personnel, and leadership. Authorized temporary intergovernmental personnel exchanges between SEAs and OE.
- **Title VI—Restriction of Federal Control:** included a provision that no federal official exercise supervision of curriculum, administration, personnel, or choice of instructional materials in any school system.

ESEA was clearly a dramatic departure from earlier education programs and proposals. It identified new federal interests in education. With authorizations of more than \$1 billion in the first year, it was massive in size and scope. By contrast, the Morse-Dent Bill had authorized spending \$218 million, the 1963 Kennedy proposal authorized \$375 million. Perhaps most important in the short run, it was the first aid to education act supported by both of the principal interest group antagonists—the NEA and the USCC. The NEA announced its support for the bill's concept of aid to private schools in

December 1964, while the USCC publicly announced support when the legislation was proposed by President Johnson on January 16, 1965.

A factor which proved crucial in establishing these negotiated agreements was the 1964 election. As Eidenberg and Morey assert:

The election . . . changed the political conditions under which education policy would be made in 1965. It changed this environment sufficiently to move the two principal groups to positions of tolerance and flexibility on a legislative program which they both would have opposed under different conditions.¹⁰

The election dramatically strengthened the Administration's core of liberal Democratic support in Congress, which enhanced its bargaining position with the groups. Furthermore, while aid to education was not itself a central issue in the campaign, it was generally believed that the election provided the President with a mandate for action.

These factors combined to make the group representatives more flexible. The USCC feared that the Administration could push through a version of President Kennedy's 1961 legislation, which provided federal aid entirely to public schools. Failing to cooperate, Catholic representatives believed they might be written out of a massive and permanent federal aid program.¹¹ The NEA, on the other hand, feared that a failure to cooperate on the legislation would produce dire consequences during implementation. Its relationship with OE was less close under Commissioner Keppel, given his higher education background and stress on educational innovation. The NEA might so alienate OE as to jeopardize its access during the development of regulations. Given these motivations, the new "child benefit" policy formula allowed the groups to move from their uncompromising positions of the past without directly contradicting them. It was a "new ball game."

Other factors besides the election acted to ease the process of consensus building as well. Keppel's relationship with the White House demonstrated to the parties involved that he acted under Presidential authority. Further-

more, by settling the question of federal aid to segregated schools the *Civil Rights Act of 1964* had neutralized the troublesome racial issue.

CONGRESSIONAL PASSAGE

Notwithstanding the coalition that had been established and the apparent resolution of the religious issue, Administration and Congressional leaders took nothing for granted in planning the strategy for Congressional passage. They knew that many coalitions over federal aid to education in the past had collapsed en route to passage. Indeed, settlement of the religious issue highlighted difficulties that it had overshadowed. Additional efforts were taken to address these conflicts prior to Congressional consideration.

- The formula was designed both to focus funds on areas of poverty and still distribute some assistance to virtually every Congressional district;
- new programs and funding were included for every level of government—federal, state, and local;
- stress placed upon educational innovation, which appealed to certain parts of the education community, was combined with massive support of the educational establishment.

Considerable administrative discretion remained in the legislation on various matters of controversial detail. As Bailey and Mosher write:

... Title I exemplifies a common legislative technique for dissipating political opposition in the enactment phase of controversial laws. Congress created an undefined area of administrative discretion for the Commissioner of Education and the states far more extensive than mere supervision of fiscal accountability and probity, and delayed to the implementation stage of Title I the job of dealing with unresolved issues.¹²

This left important ambiguities that could be exploited by federal aid opponents. Thus, the

decision was made to rush the legislation through Congress before agreements could unravel and latent conflicts could emerge. Bills were introduced in Congress on January 12, 1965, the same day the legislation was revealed by the President. Initial efforts focused on the House side, where the dangers of latent opposition were the greatest. Only ten days after its introduction, hearings were begun on the proposal in the House Education Subcommittee.

There was immediately some Congressional resentment of the policy process that was underway. The legislation had largely been developed in secret and then sprung on Congress with the expectation that it be passed immediately and unamended.¹³ The religious compromise had solved the major problem of most Democratic aid proponents, but many remained unhappy with the formula. The propensity of many Republicans to oppose parochial school aid was exacerbated by the partisan atmosphere of the policy process.

These issues began to emerge during the subcommittee hearings. The greatest dissatisfaction was with the Title I formula. Edith Green (D-OR), an important Representative on educational matters, attacked the limitations on interstate equalization in Title I; by tying federal aid to state educational spending, this program for the disadvantaged could be skewed toward wealthy but educationally active states. From the other side, complaints were expressed over the failure of the formula to include as disadvantaged the children of welfare recipients whose level of income was above the \$2,000 poverty limit. To include such children would tend to aid northern states with higher welfare payments.

Another issue concerned the ambiguity of the program of federal assistance to parochial schools under Titles II and III. Despite the concept of child benefit, actually providing parochial school teachers and students with equipment and facilities, without aiding the school directly, promised to be difficult to administer. The need to make this concept operational threatened to reopen the religious issue once again. Furthermore, although the major groups had been persuaded to accept these provisions, some groups did not accept this technique for separation of church and state. Both the American Civil Liberties Union and the American

Jewish Congress expressed concern over these provisions.

Finally, Republicans charged that several titles of the act authorized undue discretion and interference in local education on the part of federal officials, despite the act's avowal to the contrary. Similarly, the Council of Chief State School Officers (CCSSO) publicly opposed Title II because of its provision for direct federal administration of the program where states were unable to do so because of state law. According to Bailey and Mosher:

This "escape clause," a concession to the nonpublic school interests, was regarded by many professional educators and members of Congress as an undesirable extension of federal authority. It provoked attacks on Title II that were more concerted and determined than opposition offered to the propriety of the proposed program itself.¹⁴

However, other aspects of the legislation, such as Title V assistance to state education agencies, "may well have rendered more palatable to them... provisions of other titles which they disliked."¹⁵

Despite the acknowledged validity of several issues, few changes were made in the legislation. The Administration's position was that, faults aside, the bill was one that could pass. It had saved members from their primary fear of crosscutting religious pressures, and major substantive changes could unravel the multiple, fragile compromises that comprised it. As the AFL-CIO testified:

I repeat... let's get started... and get a bill through here, and begin to get some money into our school systems where we know it is badly needed, and then we can take another good look and get closer to the goal that both you and I want; and we make no bones about it, that we want a general education bill.¹⁶

Even before the bill was reported to the House, subcommittee chairman Carl Perkins (D-KY) promised that hearings on formula changes

would begin immediately following the bill's passage.¹⁷ These arguments proved successful. As one member of Congress remarked:

... [W]e just had to make the hard choice and face the reality that in 1965 the issue was not good education policy versus bad. The question... was whether there was ever to be federal aid to the elementary and secondary schools of this nation. The 1965 bill, in all candor, does not make much sense educationally; but it makes a hell of a lot of sense legally, politically, and Constitutionally. This was a battle of principle, not substance, and that is the main reason I voted for it.¹⁸

Subcommittee hearings were completed in ten sessions in 12 days, often running into evenings and weekends. A few small changes were made by the subcommittee. Most notably, it was clarified that educational materials under Title II were to be publicly owned and simply loaned for private school use. Unable to affect any changes, Republican members of the subcommittee boycotted the legislative markups, protesting the "hasty and superficial" treatment given the bill.¹⁹

Markup in the full Education and Labor Committee began immediately upon receipt of the bill. Issues raised at the subcommittee stage continued during the "formalities" of full committee consideration.²⁰ Mrs. Green joined with Reps. Charles Goodell (R-NY) and Albert Quie (R-MN) in seeking to alter the legislation. The Democratic leadership resisted all changes. The bill was reported to the full House by the Committee with its last major Congressional alteration: the formula was altered to include the children of welfare recipients who earned more than the original income limit defining poverty. Eight Republicans dissented from the Committee report.

On March 22, the bill cleared one of its traditional hurdles, the House Rules Committee, by an 8-7 vote. Floor consideration began eight days later. Membership polls by the House leadership indicated easy passage, but precautions were taken against troublesome amendments. Administration strategists were stationed in the House gallery to provide helpful

replies to difficult questions.²¹ Reps. Green, Goodell, and Quie again led the attack. Proposed changes in the formula, which benefited many members' districts, were beaten back, as were all other amendments. The bill passed the House with no more changes on March 26 by a vote of 263 to 153. As one observer remarked:

The education bill was the most interesting bill of the first session of the 89th Congress, because of the broad base of opposition that could have resisted it, and the interesting way in which the bill was put together to negate each segment of the potential opposition. It was essentially an interesting technical problem in legislating.²²

For their part, some Republicans called it the "Railroad Act of 1965."²³

Senate consideration proved to be less eventful. Sen. Wayne Morse (D-OR), chairman of the Education Subcommittee, had agreed with Ad-

ministration strategists that the Senate pass the bill exactly as the House had, in order to eliminate the need for a House-Senate conference over differences. Such a conference would provide an additional opportunity for opponents to block the legislation, as actually occurred in 1960. This was an extreme case of deference to tactical considerations. Since the Senate is a coequal branch of government, its members naturally desire an opportunity to influence legislation. In order to provide a degree of Senate input, the House Education and Labor Committee report was deliberately written to reflect a number of Senate views. Additional topics were taken up independently in the Senate Committee's report. Thus, Senators were able to influence key elements of the legislative record that would later form the basis of federal regulations and court decisions.

During Senate consideration of ESEA, the bill's formula again became an issue. An amendment to alter it and benefit a majority of states was easily defeated.²⁴ The bill passed the Senate on April 9, 1965, by a vote of 73 to 18.

FOOTNOTES

¹Public Law 89-10.

²The major exception to this was ESEA Title III, educational innovation, about which there is general agreement that the Gardner Task Force was the crucial innovator. See, for example, Stephen K. Bailey and Edith K. Mosher, *ESEA: The Office of Education Administers a Law*, Syracuse, NY, Syracuse University Press, 1968, p. 54.

³Quoted in Congressional Quarterly, *Congress and the Nation, Volume II: 1965-1968*, Washington, DC, Congressional Quarterly Service, 1969, p. 720.

⁴Quoted in Eugene Eidenberg and Roy Morey, *An Act of Congress*, New York, W. W. Norton & Co., 1969, p. 77.

⁵*Ibid.*, p. 80.

⁶Interestingly, the Chamber of Commerce was no longer deemed a sufficiently important influence on education legislation to merit inclusion. See *ibid.*, p. 61.

⁷*Ibid.*, p. 60.

⁸Bailey and Mosher, *op. cit.*, p. 51.

⁹*Ibid.*

¹⁰Eidenberg and Morey, *op. cit.*, p. 86.

¹¹*Ibid.*

¹²Bailey and Mosher, *op. cit.*, pp. 50-51.

¹³Bailey and Mosher write that "... key staff members of the education committees in both houses were frequently consulted, but most of the key Senators and Congressmen knew only what they read in the newspapers." *Ibid.*, p. 61.

¹⁴*Ibid.*, p. 53.

¹⁵*Ibid.*, p. 58.

¹⁶Quoted in Eidenberg and Morey, *op. cit.*, pp. 105-106.

¹⁷*Ibid.*, p. 92.

¹⁸Quoted in *ibid.*, p. 93.

¹⁹Quoted in *ibid.*, p. 106.

²⁰*Ibid.*

²¹An account of their activity is given in *ibid.*, p. 129.

²²Quoted in *ibid.*, p. 144.

²³*Ibid.*, p. 95.

²⁴*Ibid.*, p. 165.

New Controversies and Old: The Politics Of Implementation

President Johnson signed ESEA into law on April 11, 1965, in the one-room Texas schoolhouse where he had once taught. With his usual flair for the dramatic, he called it "the greatest breakthrough in the advance of education since the Constitution was written."¹ Passage of the act culminated more than 90 years of active struggle to achieve large-scale federal involvement in education. However, the politics of *federal involvement did not cease with this achievement*. There began, instead, a new phase marked by novel problems of implementation and recurrent issues of race, formula, and federal control.

ESEA also established a pattern for future enactments. Subsequent proposals tended to mirror its focus on educational reform, adopting either a concern for the disadvantaged or *for educational innovation*. These areas defined a new rationale for federal involvement in education that could be adapted to other problems. Thus, following ESEA, passage of new programs to aid the disadvantaged included education for the handicapped, bilingual education, and Indian education. Programs designed to stimulate state and local activity in new educational areas included environmental, ethnic, and career education.

ISSUES IN IMPLEMENTING AMBIGUOUS LAW

ESEA was an artful political compromise. Largely for this reason, it was a difficult pro-

gram to implement. As former Commissioner of Education, Harold Howe, remarked:

ESEA was the only type of federal activity in education which was likely to be politically viable in 1965. . . . I doubt that anyone could have dreamed up a series of education programs more difficult to administer . . . but ESEA was not designed with that in mind.²

Inconsistent goals had been combined, and potential conflicts had been deliberately disregarded in order to ease passage of the act.

Indeed, there was even disagreement as to whether the program constituted general or categorical aid. Many perceived the bill as general aid to education. This was certainly true of many in Congress, according to Eidenberg and Morey: ". . . The participants in the federal aid fight in 1965 all acted as though and spoke as if the issue to be decided was whether the federal government would enter the field of general aid to education."³ It was true as well of local school officials. ". . . [A] number of local educational agencies interpreted ESEA as a general aid to education bill," write Bailey and Mosher.⁴ Yet, the structure of the program was categorical, a characteristic that was crucial to the bill's passage. Title I, for example, was intended to benefit the educationally disadvantaged. Together with the legislation's stress on innovation, many expected this program to prod local government, to spur educational reform. However, the Title I category was very broad, similar to a block grant. A recipient class was identified, but the range of possible services was practically "endless."⁵

The ambiguity in the legislation gave considerable latitude for determining the actual content of the program in the program's implementation. This placed great responsibility on the Office of Education. The situation was further complicated in other ways. The Office of Education was, itself, largely divided over the proper interpretation of the act. Personnel hired under the Kennedy and Johnson Administration tended to favor an activist federal role. Veteran employees of the office, however, generally favored a more restrained federal posture, based upon their conception of a service-oriented agency.

The complexity of the program added to these difficulties. Even had there been agreement on purpose, administration of the law would have been complicated. The act contained five separate titles, each with a different objective, funding mechanism, clientele, and intergovernmental relationship. Title I alone was a web of administrative complexity. Bypassing the states, it distributed federal funds directly to the county level through a formula based on average state education expenditures and poverty levels. Within counties, funds were to be distributed among school districts on the basis of relative poverty. Once in the school system, however, the focus was to be on educationally deprived children, regardless of income status. Local programs to assist such children then required approval, not by the Office of Education (OE) directly, but by the state education agency on the basis of federal guidelines.

EDUCATION AND CIVIL RIGHTS

With the implementation of ESEA, aid to education became linked with federal desegregation efforts, and racial controversy emerged as a central issue in the program. This had not been anticipated. Prior to 1964, federal desegregation efforts were centered in the federal court system. The Supreme Court had led the way in 1954 with the prohibition of educational segregation in the *Brown* decision. Implementation of this decision was carried on by the courts under the mandate of "all deliberate speed." Citizens dissatisfied with the speed of progress in their school district could bring suit for enforcement, but this case-by-case method was slow.⁶

The breakthrough was provided in the *Civil Rights Act of 1964*. This act prohibited discrimination in public accommodations, employment, and education, and it provided for federal enforcement through the legal system. Most importantly for federal aid to education, however, Title VI of the act prohibited discrimination in any federally assisted program. Beryl Radin asserts that this provision of the act was something of a legislative accident: "The title had been originally inserted into the bill by the Kennedy Administration for bargaining purposes: the John Kennedy assassina-

tion and the subsequent Johnson honeymoon gave the section real life."⁷ At the least, legislative intent concerning the enforcement of the provision was ambiguous:

...none of the powerful elements within the legislative coalition—the labor unions, church groups, and the NAACP—had a clear picture of a path that would be required for federal officials to proceed from the status quo to the goal enunciated in Title VI. The minimal debate on the measure within Congress also reflected the failures of the contending interest groups involved in the lobbying to focus on the administrative imperatives of the title. . . . The Title VI issue [is] an example of a policy area that took administrative form without a clear blueprint for enforcement emerging through the legislative process.⁸

As a result, the provision was not vigorously enforced in many federal grant areas.⁹

This was not the case in aid to education, however, where the linkage between federal aid and discrimination was unavoidable, especially in the south. ESEA became a major tool in the enforcement of Title VI, as Radin observes:

...in the Department of Health, Education, and Welfare—and especially in the education activities of the department—serious attempts were made to condition the federal dollar on nondiscrimination requirements. These serious efforts were made after the enactment of ESEA. . . . Indeed, OE spent many more hours, resources, and effort in the Title VI requirements and policies after the enactment of ESEA—almost a year after the 1964 *Civil Rights Act* was passed.¹⁰

There was a degree of irony in this result. One reason that ESEA avoided the troublesome race issue in Congress in 1965, which had undermined so many federal aid attempts in the past, was the Congressional assumption that the federal aid and desegregation question had

been settled by the *Civil Rights Act* the year before. It was not assumed that ESEA would become the crucial tool in implementing it. Some have since questioned its effectiveness in this regard.¹¹ However, a recent study by Gary Orfield places ESEA at the heart of southern desegregation efforts:

The enforcement of the 1964 law broke the logjam of resistance. . . . As President Johnson left office in 1969 a number of the goals of civil rights leaders were in sight. By the fall of 1965 most southern school systems had executed plans more demanding than those won by litigation. The next year, HEW toughened its requirements. As President Nixon was sworn in, school assignment policies in the rural south were rapidly approaching parity with those in the north.¹²

This served to enormously complicate the already difficult implementation problems of ESEA and to strengthen political opposition to the program. To the massive task of administering a large and complex new law was added the simultaneous requirement to enforce the civil rights provision:

The task facing the Office of Education was staggering. It had to induce instant desegregation and to end programmatic discrimination in every school district slated for the award of federal aid. . . . Compounding the dilemma was the fact that the *Civil Rights Act* provided no definitions of segregation and discrimination. . . . [T]he sheer volume of work involved in processing the submissions of nearly 5,000 southern and border districts severely impeded other USOE efforts. . . . [T]he fear that sizable blocks of funds would not be distributed because the necessary Title VI assurances could not be negotiated and processed in time brought the problem to crisis proportions.¹³

During the first year, OE guidelines for civil rights compliance allowed segregated school

districts to make a "good faith start," relying on voluntary desegregation plans. Funding cut-offs were avoided. This strategy's lack of effectiveness produced stronger aid requirements the next year.¹⁴ Funding cutoffs for noncompliance became more common.

Reactions to this effort were strongly negative. The civil rights regulations greatly compounded local disaffection with program constraints arising from the categorical nature of Title I. Moreover, in some instances the two sets of requirements were incompatible.¹⁵ The result was a powerful Congressional reaction:

Congressional opponents turned belligerent... when the agency made clear that it was actually aiming at transformation of the southern school systems. Southerners were shocked that HEW was prepared to take the almost unprecedented step of cutting off large amounts of federal grants-in-aid.¹⁶

THE CONGRESSIONAL RESPONSE, 1966

Due largely to Congressional dissatisfaction with the Title I formula when ESEA was rushed through Congress in 1965, the program was given only a one-year authorization. Thus, it had to be considered again in 1966. In this short time span, the Congressional environment was already in "marked contrast" to the year before.¹⁷ In addition to growing opposition to HEW policies in the south, urban riots and an aborted Office of Education attempt to challenge de facto segregation in Chicago served to heighten racial concern among many northern Congressmen. Furthermore, the growing war in Vietnam and the President's falling popularity had weakened the Administration's standing in Congress. This was exacerbated when President Johnson proposed a 50% cut in the popular impact aid program.

Congress was sharply divided over several education issues. Republicans and southern Democrats split with urban Democrats over the Title I formula. An incentive grant provision in the formula designed to stimulate state education spending was contested throughout the

legislative process and finally dropped. Intended to narrow the spending gap between states, it had the perverse effect of increasing federal aid disparities by stimulating the most affluent states.

Additional formula changes benefited both groups but only by substantially raising the program's authorization. One amendment allowed poorer states to use the national average of state school expenditures per child if this was higher than their own average expenditure, thus increasing their relative share of funds. On the other hand, the low income definition was raised to \$3,000, which aided the northern states. Both changes were to occur in 1968, but Congress later revoked the second change so that it did not take effect.

Race issues dominated consideration of the legislation on the House floor. Eidenberg and Morey write that:

The preoccupation of the members with this issue was cause for some alarm among federal aid advocates and the Democratic leadership. They felt they had enough votes to defeat any amendments to the bill except those involving race.¹⁸

An antibusing amendment was easily adopted, prohibiting any federal department or agency from requiring "the assignment or transportation of students or teachers in order to overcome racial imbalance."¹⁹ A small grant program providing aid to districts undergoing desegregation was eliminated. Most importantly, major Administration opposition failed to prevent House passage of the Fountain Amendment, which placed important procedural limitations on OE's ability to withhold school aid funds for discrimination violations. Senate modification of this provision prevailed, however.

Congress also established a number of new programs and earmarks in the ESEA. A new Title VI was added to the act, authorizing a program of federal grants to the states for the education of mentally and physically handicapped children. This program had bipartisan support in the Senate and was accepted by the House in conference.²⁰ Adult education programs were transferred to OE from the Office

of Economic Opportunity (OEO). Earmarks were established in the Title I program for the children of migrant workers and for children attending Indian schools. Finally, Congressional pressure for increased education spending was strong. The Senate raised education authorizations almost \$1 billion above the Johnson Administration's request, and a \$700 million increase was retained in the final bill.

THE CONGRESSIONAL RESPONSE, 1967

The Congressional challenge to ESEA was even more serious in 1967. Federal control over education became a central issue, while racial controversy continued to jeopardize support for the legislation. Gary Orfield writes that:

The mortal threat to the program suddenly became clear in early 1967. House Democratic leaders were shocked to learn that a Republican plan might well pass that would turn ESEA into a kind of education revenue sharing. . . . In a long and dramatic fight the House leaders stalled the bill while education groups, the White House, and committee members worked to put the coalition back together again.²¹

In the 1966 election, Republicans reversed the Democratic gains made in 1964 with a net increase of 47 seats in the House. The reinvigorated Republican Party gave an education block grant proposal strong support. It was introduced in the House by Rep. Albert Quie (R-MN), third-ranking Republican on the Education and Labor Committee, and it had the support of 12 of the 14 Republicans on the Committee. The block grant was an expression of concern over federal control of education. Under its provisions, Titles I, II, III, and V of ESEA would have been consolidated into a single grant to the states. It represented a fundamental assault on the categorical character of ESEA by: ". . . leaving state and local school agencies to establish their own priorities and to devise patterns for using the funds which best fit both their needs and their structure of education finance."²²

The prospects for basic change of ESEA were enhanced by serious divisions within the Democratic ranks. Southern Democrats, of course, remained thoroughly opposed to desegregation activities in the south. They held the balance of power in deciding the block grant issue. Northern Democrats continued to be divided over the Title I education formula. In addition, Rep. Edith Green (D-OR) had held critical hearings on the administration of ESEA in the House Special Subcommittee on Education. Having investigated problems of funding, program organization, fragmentation, paperwork, and federal control, Mrs. Green had prepared a number of amendments to the education bill.

The first amendment offered by Rep. Green required that Title VI desegregation guidelines be uniformly enforced throughout the country. This was adopted despite charges that it was meant to kill the education bill. The Fountain Amendment, placing procedural restrictions on the cutoff of funds for desegregation violations, was passed once more. Another amendment was passed that increased the formula allotment of funds to poorer states in the south.

All of these alterations were favorable to the south. This proved crucial in attracting sufficient southern support for ESEA to defeat the Republican block grant proposal. For their part, Democratic leaders and federal aid supporters had rallied to reconstruct their endangered coalition. Quie had attempted to force the issue of federal control: "Are we going to give, step by step, more control to the Commissioner of Education or are we going to restore state control?"²³ In so doing, he had gained support for his proposal from the state school officials, the Chamber of Commerce, and numerous small town school administrators who were upset over federal guidelines and paperwork. On the other hand, civil rights groups opposed limiting the federal role, as did most big city school superintendents who feared a loss of funds under state control and who often found state regulations as onerous as federal ones.

It was the church-state issue, however, which proved crucial in maintaining the federal aid coalition. Aid supporters feared the block grant would revive religious controversy in the states, as they attempted to determine federal

aid priorities anew. Religious controversy might then escalate and endanger federal aid itself. In short, the NEA, the Catholic Conference, the National Council of Churches, and their Congressional allies preferred to retain an acceptable status quo rather than raise the prospect of upsetting "the delicately balanced compromise" and risking "a holy war."²⁴ The Quie Amendment was defeated by a vote of 168 to 197.

With the defeat of the Quie Amendment, Rep. Green introduced a compromise proposal giving control of Titles III and V (supplemental centers and state agency grants) to the states. Despite Administration opposition, this decentralization proposal was passed by the House. The Senate attempted to weaken it, but it was restored in the conference version of the bill. As in the House, the Senate became caught up in controversy over racial issues. A weakened version of the Fountain Amendment and an antibusing provision were finally passed by that chamber.

ESEA survived a strong challenge in 1967, although the federal role in education had been weakened by the Green Amendment and the limits placed on desegregation efforts. As Tom Wicker wrote in *The New York Times*, however: "The significant thing is that if the Republicans now intend to fight it out on this line then the 'real issue' of American politics is no longer whether government should act but how and at what level."²⁵ Moreover, as in 1966, a number of new programs were added. One was bilingual education (Title VII), designed to improve the education of children with limited English-speaking ability. This program was developed in the Senate, "at the initiative of Congress, particularly the delegations from California and Texas."²⁶ Another Senate initiative was a program of grants for dropout prevention (Title VIII). Finally, ESEA Title VI (state grants for the handicapped) was expanded to include funds for regional resource centers for handicapped children, model centers for deaf-blind children, and personnel recruitment.

FOOTNOTES

¹Quoted in Jerome T. Murphy, "The Education Bureaucracies Implement Novel Policy: The Politics of Title I of ESEA, 1965-72," in Allan P. Sindler, ed., *Policy and Politics in America*, Boston, Little Brown & Co., 1973, p. 161.

²Quoted in *ibid.*, p. 194.

³Eidenberg and Morey, *op. cit.*, p. 91. Congressional Quarterly called the act, "the first general aid to education law." *Congress and the Nation, Volume II, op. cit.*, p. 710.

⁴Bailey and Mosher, *op. cit.*, p. 188.

⁵"The schools could reduce their class sizes, hire remedial reading teachers, buy special equipment, serve breakfasts at school—the possibilities were endless." Congressional Quarterly. *Congress and the Nation, Volume II, op. cit.*, p. 710. Murphy notes that: "The House Committee Report on ESEA . . . contained a 'laundry list' of 49 possible Title I expenditures ranging from reading programs to health services. . . ." Murphy, *op. cit.*, p. 169.

⁶See, for instance: Gary Orfield, *Must We Bus?*, Washington, DC, Brookings Institution, 1978, p. 362; and Beryl Radin, *Implementation, Change, and the Federal Bureaucracy*, New York, NY, Teachers College Press, 1977, p. 100.

⁷Radin, *op. cit.*, p. 56. See also p. 5.

⁸*Ibid.*, pp. 146, 211.

⁹"Since 1964, most agencies of the federal government have given little more than rhetorical attention to the goal of nondiscrimination expressed in Title VI." *Ibid.*, p. 7.

¹⁰*Ibid.*, pp. 7, 92.

¹¹See, for example, Bailey and Mosher, *op. cit.*, p. 153.

¹²Orfield, *op. cit.*, pp. 362, 281-282.

¹³Bailey and Mosher, *op. cit.*, pp. 144, 148.

¹⁴"In March 1966, OE issued a set of new requirements that clearly displayed a mood of impatience with the progress of the previous year. . . . In general, the tone and the substance of the revised guidelines were tough." *Ibid.*, p. 155.

¹⁵*Ibid.*, pp. 149-150.

¹⁶Orfield, *op. cit.*, p. 237.

¹⁷Eidenberg and Morey, *op. cit.*, p. 186.

¹⁸*Ibid.*, p. 195.

¹⁹Quoted in *ibid.*, p. 194.

²⁰*Ibid.*, pp. 198, 201.

²¹Gary Orfield, *Congressional Power: Congress and Social Change*, New York, NY, Harcourt, Brace, Jovanovich, 1975, p. 132.

²²Quoted in Eidenberg and Morey, *op. cit.*, p. 208.

²³Quoted in *ibid.*, p. 211.

²⁴The remarks of Speaker John McCormack (D-MA) and Rep. Hugh Carey (D-NY), respectively, quoted in *ibid.*

²⁵Quoted in *ibid.*, p. 213.

²⁶P.L. 90-247, Congressional Quarterly, *Congress and the Nation, Volume II, op. cit.*, p. 713.

Federal Aid To Education Under Fire: The Nixon Years

When the Nixon Administration came to office in 1969, ESEA was a seriously troubled program. Its rationale was suspect, its performance questioned. There were flaws in the formula that were exacerbated by state and local practices. There were complaints that federal controls under the program were both too strong and too weak. As Samuel Halperin, one of the architects of the program under the Johnson Administration, remarked in 1970, little celebration greeted ESEA on its fifth anniversary:

Not among the ranks of federal budget makers and top policymakers, many of whom seem to doubt the act is "cost effective." Not among educators, many of whom accept its funds but complain of excessive red tape and bureaucracy in order to obtain relatively little federal money. Not among the embittered parents of ghetto children, most of whom have seen precious little change for the better in the quality of their children's education. Not even among the Congressional liberals who were the act's most dedicated advocates, but who are now embarrassed by the critics and seem unable to counter with dramatic success stories made possible by ESEA.⁷

The problems which gave rise to these con-

cerns were genuine. ESEA was possibly the most evaluated federal program in existence. Thorough evaluation had been required by law, at the initiative of reformers such as Sen. Robert Kennedy (D-NY), concerned with political accountability, and management reformers interested in applying cost-benefit analysis to social programs.² Yet, evaluation efforts were surprisingly difficult to actually perform. "There are numerous reasons why efforts to evaluate Title I failed. The central cause is that school districts had no incentive to collect or report output data, and federal officials lacked the political muscle to enforce evaluation guidelines. . . ."³ Evaluation studies that were done tended to produce discouraging results for program supporters. They showed that achievement test scores of children participating in Title I compensatory education programs were generally not significantly better than those of similar children not participating in the program. When improvements were discovered, they usually proved to be temporary. As Julie Roy Jeffrey summarized these studies:

. . . the lackluster results from large-scale programs were suggestive. . . . Compensatory education, as most often organized, did not appear able to overcome the effects of poverty with any predictability. . . . It was obvious that Title I had not lived up to the rhetorical claims made for education in the early days of the War on Poverty.⁴

Such conclusions were not unanimously shared. The objectives of the program were so broad and varied that, apart from methodological ease, it was unclear that test scores should be the basis of evaluation. As McLaughlin explains:

. . . an analysis of impact on achievement assumes increased achievement to be a program goal and that the treatment activities could conceivably have some effect on academic achievement. Title I, however, evidences no such agreement among local programs on either means or ends. . . . It is little more meaningful to assume that better academic achievement is the single

most important goal of Title I than it is to insist that its most important objective could be measured by counting the number of hot lunches served, . . . or the number of private school children served. . . . To conclude on the basis of standardized test scores that Title I is not (or is) "working" is not justified.⁵

Moreover, a 1969 study by the National Advisory Council on the Education of Disadvantaged Children indicated that, however rare, successful compensatory education projects could be devised.⁶ Defenders of Title I could point to poor local administration or inadequate funding as the real culprits in cases of failure.⁷ Wirt and Kirst write that: "Indeed, [civil rights organizations] felt that Title I never had a chance to bring about achievement gains . . . because the money was being spent for general aid and diverted from the special educational needs of disadvantaged children."⁸ The political effect of the evaluation studies, however, was clearly negative for ESEA.

The distribution of funds under Title I was equally controversial. To begin with, the program spread funding very widely, despite its poverty rationale. A school district needed only 100 poor children or 3% of its enrollment in order to qualify for federal aid. Under this formula, 95% of the nation's counties were eligible.⁹ The interstate allocation of funds was criticized for the same reason and has continuously been an issue of Congressional dispute. As noted previously, the formula responds positively to state educational expenditures as well as to poverty, thus aiding the active but wealthier states of the north. The 1967 change in formula favored the south, but did not totally erase this tendency. In per capita allocations:

The allocation per formula child is relatively low for counties that contain high proportions of eligible children. This is because the southern states, which have the lowest educational expenditures, also contain most of the districts that have heavy concentrations of low income children.¹⁰

ESEA defenders could counter that, after the

1967 formula changes, Title I did have an equalizing effect, in contrast to most other federal and state aid programs:

Title I is markedly more redistributive than other state and federal aid programs. . . . A recent study of aid programs in education, welfare, and other areas suggests that Title I might be the most redistributive of all federal domestic programs providing funds to jurisdictions. . . . Title I funding was shown to have a correlation of -0.76 with county per capita income. Only the food stamp program came close to equaling this apparent redistributive effort.¹¹

Nevertheless, the existence of this controversy itself, with its charges and countercharges, served to weaken the program's justification and support.

The issue of federal control over education continued to provide a third area of controversy. The strength of the issue had been illustrated in the block grant controversy of 1967. Rep. Quie pressed the issue once more in 1969. Paradoxically, however, most students of ESEA have emphasized the degree of freedom exercised by local school officials and the limitations on federal oversight. As Milbrey McLaughlin observed: "In practice, many LEAs [local education agencies] have used Title I funds as general aid, some quite blatantly and others by stretching the operational definition of 'category' to its broadest interpretation."¹² Jeffrey's study of ESEA agrees: ". . . the Office of Education did not dominate state and local authorities. Local areas used funds as they wished."¹³ An important study by civil rights groups in 1969 reached similar findings. It utilized internal HEW audits which disclosed:

. . . numerous violations of the law across the country. Title I supplied general aid for all children in some school districts, rather than focusing on the special needs of the disadvantaged. Title I was used in place of state and local funds, rather than adding supplementary services in others. In addition, a variety of questionable, if not illegal, purchases were made:

classroom carpeting, bedroom sets, football jerseys. . . . HEW auditors . . . estimated that [misuse of funds] was "substantially greater" than 15% of Title I's total allocation.¹⁴

In a "scathing" attack on OE's administration of Title I, the report charged that:

The audit reports have brought to light numerous violations of the law and have recommended that millions of dollars be recovered by the federal government. Yet in only three cases has the Office of Education sought and received restitution of funds illegally spent. . . . Even in the most flagrant cases . . . the Office of Education has failed to act.¹⁵

These critiques all gave essentially the same reasons for the failure of federal officials to enforce Title I guidelines. OE has traditionally been a weak organization which deferred to the practices of state and local school officials. The complexity of the Title I program tended to reinforce this posture, making effective federal control through the program virtually impossible. The Office of Education established eligibility guidelines and criteria for local projects. Enforcement of these was left to the states, however, which frequently ignored them.¹⁶ Since Title I money was automatically disbursed by formula, the only direct form of control was the drastic step of total cut off of aid.

The result was that practically no one was satisfied with the ESEA. The circumvention of compensatory education objectives displeased liberals and minority spokesmen. There was equal discontent among local school officials. Certain federal regulations, such as Title VI, had been effective in changing established local practices. Furthermore, the categorical nature of ESEA and the mandate for evaluation produced considerable paperwork, restrictions, and red tape. Frieden and Dunbar maintain that the program's data requirements for substantive evaluation surpassed those for fiscal accounting and ignored the relatively small share of federal funds in local education: "Data are required to cover the entire field of endeavor: all activity, all revenues, all expendi-

tures, *all* evidences of need, work measurement, and accomplishment.”¹⁷ Moreover, Edith Mosher argues that the traditional autonomy of education increased the “initial shocks” of federal regulations under ESEA. Many standard and accepted federal practices in other functional areas appeared as “federal control” in education: “When federal funding at long last became available, education was catapulted into intergovernmental administrative arrangements that were already familiar in other sectors, improvisational and unwelcome as they may have seemed to educators.”¹⁸ Regardless of outcome, Office of Education attempts to enforce program compliance heightened such local fears of control.

During the Nixon Administration, the dissatisfaction with the program that had developed in the final years of the Johnson Administration was reflected fully in Administration policies. Reviewing the education programs of the 60s, President Nixon in 1970 concluded that: “the best available evidence indicates that most of the compensatory education programs have not measurably helped poor children catch up.”¹⁹ The Administration’s response was a three-tiered attack on the federal role in education which lasted the length of the Nixon Presidency. This included: confrontation with Congress over the education budget; the exploitation of racial politics; and the promotion of education revenue sharing.

THE POLITICS OF THE EDUCATION BUDGET

Congress took the first action on education in 1969. Anxious to protect the Great Society programs, the House Education Subcommittee rushed a five-year reauthorization to the floor. Orfield remarks that:

... the committee leaders actively mobilized the constituents of the programs they wished to continue, then used hearings and floor debate to provide a platform for the pressure groups they helped generate. . . . Democrats were trying to force the issue and deny the new President any significant influence on the basic school program throughout his first term.²⁰

The effort was modified, however, when Republicans and conservative Democrats succeeded in limiting the attempted “deep freeze” authorization to only two years.

Although dissatisfied with ESEA, the Administration had not yet developed an education policy. ESEA was not mentioned in the President’s 1969 domestic policy message. However, the Administration did have an established policy on budgetary matters, so the initial battleground became appropriations. Actually, constraints on the education budget had begun to emerge before the Nixon Administration assumed office. Due to mounting fiscal pressure from the Vietnam War, education appropriations began lagging seriously behind authorizations. By fiscal 1968, appropriations comprised only 43% of authorizations as the federal fiscal role in education stabilized at about 8% of all educational expenditures. Orfield observes that “The original plan for a rapidly expanding program accounting for a growing proportion of the nation’s school needs was abandoned in favor of operation at a stationary level, with small increments of funds.”²¹

The Nixon Administration challenged this stable funding pattern. In order to protect “the already small range of fiscal options available to the President,” the Administration proposed a \$450 million reduction in the previous year’s education budget.²² This was even further below the incrementally growing budget that all had come to expect. The result had enormous consequences for further Administration proposals. The entire education lobby was alienated in one swift blow. The Administration’s action succeeded in overshadowing the deep cleavages within the education community by focusing attention on the common denominator of funding. In effect, it robbed itself of a major political resource for advancing future initiatives:

Instead of exploiting the many potential divisions within the education groups and within Congress, the Administration’s budget posture created an unprecedented sentiment for unity.²³

In response to the budget cuts, over 70 or-

ganizations formed the Emergency Committee for Full Funding of Education Programs to lobby by their cause. It included the entire range of affected interests: the major teacher organizations, the school board association, state school officials, Catholic and other religious groups, civil rights groups, the higher education lobby, the representatives of libraries, handicapped, and instructional material manufacturers, etc. The formal chairman of the body was Eisenhower's former HEW Secretary, Arthur Fleming. The chief organizer and lobbyist, however, was Charles Lee, former staff member of the Senate Education Subcommittee (and, with former Sen. Wayne Morse, a key architect of the federal education effort).

Lee directed a massive grassroots lobbying effort at Congress. Included were "swarms" of volunteer constituents—teachers, principals, school board members, librarians—buttonholing Congressmen and packing the galleries during floor debates and votes. As Lee explained at the time:

Our strategy consists of providing opposition Congressmen with backup information. . . . After all we're not talking about some insignificant group of people. Teachers are one of the nation's largest voting blocs. In 1972, the next Presidential election year, there will be more teachers than farmers at the polls.²⁴

Working through the summer and fall of 1969, the lobby succeeded in gaining a \$1 billion increase over the Nixon Administration's proposed education budget, overriding the prestigious Appropriations Committee on the House floor in the process.

The President vetoed the education and health appropriations bill on prime time television in January 1970, and the Administration mobilized its own lobby effort of House Republicans in order to prevent a veto override. President Nixon refused to spend the additional money even if it were appropriated. The Administration's efforts proved successful as the override attempt failed, but that success proved temporary. Since fiscal 1970 was already half over by that time, the President was forced to accept a subsequent emergency appropriation bill containing \$500 million more

than his education budget requested. This was increased another \$450 million several months later when Congress passed the fiscal 1971 appropriation. President Nixon again vetoed the bill, but an "angry" Congress, facing re-election, overturned the veto. A major Congressional-interest group initiative had thus overcome stiff executive opposition and maintained incremental growth in the education budget.

Shortly thereafter, budgetary battles commenced once more. The Administration's budget for fiscal 1973 remained stable despite inflationary erosion. Responding to the Congressional mood, the normally conservative House Appropriations Committee approved a major budget increase. With the support of the still active Full Funding Committee, the House added an additional \$364 million on the floor—primarily for Title I but including aid to libraries, impact aid, adult education, and other programs. The Senate increased this further, and the House-Senate conference agreed to an \$800 million increase over the Nixon budget. Making this an election issue, the President vetoed the bill on August 16, 1972. This veto was sustained, as was a subsequent veto of a \$300 million increase. Following his 1972 re-election victory, President Nixon embarked on a new attempt to control expenditures through impoundment. The resolution of this issue shifted action to the courts.

EDUCATION AND THE POLITICS OF RACE: LIMITING FEDERAL DESEGREGATION ACTIVITY

Active promotion of racial desegregation by the Executive Branch halted after the Nixon Administration came to office in 1969. Nixon had attacked these policies during the 1968 election and signaled his intentions when he appointed John Mitchell, campaign manager and architect of his "Southern Strategy," to the post of Attorney General. The Administration began by avoiding education fund cutoffs for noncompliance with the *Civil Rights Act*. When the courts prohibited backsliding in the rural south, however, the Administration shifted its focus to busing and began supporting the foes of urban desegregation in Congress. Antibusing amendments came to dominate Congressional and public attention in education, overshadow-

ing other important issues and programs through the early 1970s.

In March, 1970, the Administration proposed a \$1.5 billion program to aid school districts undergoing court-ordered desegregation. The so-called "Emergency Education Act" was to be a temporary program, intended mainly for the south, "to reward while helping the white south in its enforced surrender to integration."²⁵ Importantly for urban areas, it prohibited using the money for desegregation busing.

Senate liberals changed this bill into one that would promote integration; the antibusing provision was removed. Liberal ranks in the House, however, were split over the beginnings of court-ordered desegregation in the north. As a result:

The House went wild in a late evening session on November 4, 1971. Members showed that they would pass anything labeled antibusing by giving whopping margins to a whole series of drastic limitations on both the courts and Executive Branch civil rights officials.²⁶

The House added to the emergency aid bill a moratorium on court-ordered desegregation. It forbade the use of any federal funds to support busing and forbade executive use of Title VI to halt education funding of school districts violating a court busing order.

The Administration endorsed these House actions. It proposed additional legislation to limit court-ordered desegregation, including restrictions on legal remedies and the reopening of busing cases in the south. The Senate, however, ignored the President's proposals and so qualified the House amendments as to make them meaningless or ineffectual. Despite repeated "instructions" from the full House to stand firm, the liberal House conferees worked with the Senate to neutralize the antibusing amendments. Greatly modified, the *Emergency School Assistance Act*, which was the major categorical program initiated by the Nixon Administration, was signed by an "angry" President.²⁷

The President's proposal to limit court-ordered desegregation and busing, entitled the "Equal Educational Opportunities Act," was

passed by the House late in 1972, again by very wide margins. Lacking the votes to defeat it, Senate liberals adopted an earlier civil rights tactic from their southern conservative opponents. They filibustered the bill to death. The busing issue returned, however, in 1974. Led by the Michigan delegation and supported by the Administration, the House again passed the sweeping antibusing amendments of 1971, overcoming all attempts at compromise. The amendments were again defeated in the Senate—by a one-vote margin—and the bill was modified in conference. Restrictions on the use of federal funds for busing were adopted, and HEW enforcement powers were weakened, but the limitations on the courts were softened. Once more, liberal influence in the Senate and in the House Education and Labor Committee, from which the House conferees were drawn, obstructed Administration and House attempts at civil rights retrenchment. Orfield concludes of this period:

The school issue showed the change between Presidential and Congressional leadership in civil rights. . . . The Eisenhower and Kennedy Administrations had gone to Congress for additional authority . . . and President Johnson had used that authority vigorously. President Nixon, however, came asking for a retreat. Though the Senate had long been the bastion of southern power, it was now the main arena for defense of school desegregation initiatives. The House seniority system had long been accurately denounced as a major barrier to racial justice, but it now served to protect civil rights programs from a hostile House majority.²⁸

EDUCATION REVENUE SHARING: REDUCING THE FEDERAL ROLE

Education Revenue Sharing (ERS) was the third component in the Nixon Administration's challenge to the established federal role in education. Although related conceptually and circumstantially to the budget and racial controversies, ERS constituted a far more comprehensive challenge. It proposed consolidating

all of the major federal grant programs in education into one large grant-in-aid to the states. Funds would be distributed automatically through a formula with almost total control over the objectives and uses of aid given over to the states. Representing a coherent alternative to the categorical tradition in aid to education, ERS had enormous implications for the federal role in education. Yet, it was not, in the end, a very influential proposal. It was so widely and totally dismissed throughout the education community that it never became the focus of controversy it potentially was.

The immediate roots of ERS can be traced to a proposal made by Acting Commissioner of Education Terrel Bell in the fall of 1970.²⁹ Prior to assuming federal office, Bell had been state education commissioner in Utah, where he had become concerned with the degree of federal intrusion into education. As he established a task force in OE to explore the concept further, Secretary Elliot Richardson endorsed the idea in a speech to the Council of Chief State School Officers in November 1970.³⁰ The proposal was then picked up by the White House and incorporated into President Nixon's massive "Special Revenue Sharing" initiative of 1971.³¹

The education revenue sharing (ERS) plan proposed consolidating 33 separate education programs into one \$2.6 billion grant program.³² Funds were to be distributed to the states according to a formula based on need and population. States were given broad authority over the use of funds, establishing their own priorities and objectives. Federal earmarks were established in the program, however, to direct state efforts into five general areas: assistance for educationally disadvantaged children, for handicapped children, for vocational education, for support services, and for federally impacted areas.

The ERS proposal was almost totally rejected by the Congress and educational interest groups. Rep. Carl Perkins (D-KY), Chairman of the House Education and Labor Committee, compared the program to "throwing money down ratholes."³³ Rep. Edith Green (D-OR), who had sponsored decentralization proposals in 1967, called the proposal a "farce."³⁴

The opposition of certain interests had been expected. Groups like the audiovisual manu-

facturers or bilingual aid supporters predictably opposed the consolidation of existing categorical programs in their area of interest. However, major support that might have been mobilized under other circumstances was not cultivated. The Chief State School Officers and the National School Boards Association indicated varying degrees of support for the concept but did not campaign actively for the plan. Crucial groups like the NEA could have gained from unrestricted federal aid but opposed ERS.

There were several reasons for this broad opposition. First, prior Administration positions in education had alienated potential allies. Budget cuts, in particular, had aroused grave suspicion of the Administration. ERS was interpreted by many in the education field as a new budget control instrument. These suspicions were reinforced by impact aid cuts that were reflected in the block grant plan. As Rep. Quie (R-MN) observed:

Consolidation is politically acceptable only if it carries the possibility of more money. The Administration approach appeared to mean less money.³⁵

Similarly, Rep. John Brademas (D-IN) argued that consolidation simply required more money "To spread that modest amount of federal money more broadly, and not target it . . . seems to me to be pouring a glass of water on the Sahara."³⁶

Other issues were also important. Many interpreted the rhetoric on federal control to mean federal withdrawal on civil rights. The ERS plan would have been subject to Title VI of the *Civil Rights Act*, but the Administration was limiting enforcement of this provision. Parochial school officials also opposed the plan, as they had the Quie block grant in 1967, for fear of reopening religious controversies that had been laid to rest. Despite their opposition to federal regulations, local and state school officials were divided over ERS since each level of government had its own distinct interests in education. Local officials disliked state control and regulation as much as federal regulation, and they generally preferred to maintain direct federal-local ties to education.

Finally, members of Congress, even Republi-

cans like Quie, had not been consulted over the ERS plan. Most Congressmen resisted losing what control they had over existing federal aid. The targeted, categorical, innovative approach to federal aid reflected the views of many members that state and local educators had failed in certain areas of education. Eliminating categorical aid restrictions would simply reinforce local educational priorities that Congress disavowed. In short, ERS would have altered both the structure and rationale of federal aid as it had evolved with great difficulty over a long period of time—without, as Orfield observes, “providing any clear benefits.”³⁷

ERS received a dismal reception in Congress in 1971. Despite this, the plan was reintroduced in subsequent years with little change. It continued to be ignored by educators and Congressional policymakers alike. Confident from its heady victory in the 1972 election, the Administration offered its 1973 version of the plan—“The Better Schools Act” as an all-or-nothing proposition in education.³⁸ Yet, months later, it continued to be ignored on Capitol Hill, and the take-it-or-leave-it stance was quietly abandoned.

Fear of a Presidential veto of education legislation in 1974, however, led to Congressional initiation of a smaller compromise consolidation in that year. In a House-Senate compromise, seven categorical programs were consolidated into two broader programs, including: guidance and counseling and audio-visual assistance programs from NDEA and state aid, supplemental centers, and library assistance from ESEA.³⁹ This was a largely symbolic gesture with little impact on federal involvement in education. A beleaguered President accepted it, however, as “an important first step.”⁴⁰ Even the symbolism was largely obscured by debate over antibusing amendments which overshadowed the 1974 education act.

THE NIXON-FORD YEARS EVALUATED

Despite years of continual challenge, the fiscal role of the federal government in education emerged from the Nixon-Ford years surprisingly unchanged. In Orfield’s view: “The

Great Society drive that had dramatically increased the federal role in education . . . gave way to trench warfare over the basic framework of that role. Congress’ achievement was to preserve that framework.”⁴¹ On the one hand, none of the most significant avenues for expanding or reshaping the federal role were taken. The federal government did not assume a one-third share of financial support for education as the NEA advocated. The federal government did not assume a major new role in equalizing educational expenditures as many advocated after the *Serrano v. Priest* case, in which the California Supreme Court, relying on both the state constitution and the U.S. Constitution, ruled that the “quality of public education may not be a function of the wealth of . . . a pupil’s parents and neighbors.”⁴² Nor did the federal government adopt a leading role in advancing metropolitan desegregation.

Rather, incremental program development continued throughout the Nixon-Ford years. This can be seen clearly in the case of programs for the handicapped and bilingual edu-

Table 8

FUNDING HISTORY OF BILINGUAL EDUCATION AND STATE HANDICAPPED PROGRAMS, 1969-76 (in millions of dollars)

Year	Bilingual Education	State Handicapped Program ^a
1969	\$ 7.50	\$29.74
1970	21.25	37.48
1971	25.00	46.13
1972	35.00	56.38
1973	45.00	75.96
1974	66.35	85.78
1975	85.00	87.86
1976	96.27	95.87

^aThis does not include federal aid to handicapped children provided under the *Education of the Handicapped Act*, which by 1976 was providing additional funds of \$10 million.

SOURCES: House Committee on Education and Labor, Subcommittee on Elementary, Secondary, and Vocational Education, *Hearings on HR 15, Part 3: Bilingual Education*, pp. 424-425 and *Hearings on HR 15, Part 14: Title I—State Handicapped Program*, 95th Cong., 1st Sess., 1977, p. 165.

cation, for example. Each was fairly small in 1968 but had grown to substantial size by 1976. Despite the struggle over categorical assistance

and education budgets, both had appropriations approaching \$100 million by that time (see Table 8).

FOOTNOTES

¹Quoted in Frederick M. Wirt and Michael W. Kirst, *The Political Web of American Schools*, Boston, MA, Little, Brown & Co., 1972, p. 153.

²See Milbrey Wallin McLaughlin, *Evaluation and Reform: The Elementary and Secondary Education Act of 1965, Title I*, Santa Monica, CA, Ranp Corporation, 1974.

³*Ibid.*, p. viii.

⁴Julie Roy Jeffréy, *Education for the Children of the Poor*, Columbus, OH, Ohio State University Press, 1978, pp. 167, 173.

⁵McLaughlin, *op. cit.*, pp. 40-41.

⁶See Jeffrey, *op. cit.*, p. 167.

⁷Expenditures of \$500 to \$800 per child appeared to be the range necessary for successful programs, rather than the average \$113 per child provided under Title I. *Ibid.*, p. 109.

⁸Wirt and Kirst, *op. cit.*, pp. 163-164.

⁹Jeffrey, *op. cit.*, p. 101.

¹⁰National Institute of Education, *Title I Funds Allocation: The Current Formula*, Washington, DC, U.S. Government Printing Office, 1977, p. vii.

¹¹*Ibid.*, pp. 93-94. Although the south, with its high concentration of eligible (poor) children, receives less per eligible child, it receives by far the most Title I dollars per school-age child. Furthermore, the region as a whole receives almost twice the Title I funds of any other region. *Ibid.*, pp. 13, 17. On Title I equalization, see also Bedenbaugh and Alexander, *op. cit.*, pp. 277-280.

¹²McLaughlin, *op. cit.*, p. 23.

¹³Jeffrey, *op. cit.*, p. 136.

¹⁴Murphy, *op. cit.*, p. 174.

¹⁵Ruby Martin and Phyllis McClure, *Title I of ESEA: Is It Helping Poor Children?*, Washington, DC, Washington Research Project of the Southern Center for Studies in Public Policy and the NAACP Legal Defense and Education Fund, 1969, p. 52. As the management and enforcement systems of ESEA have developed since the late 1960s, and as local districts have come to fully recognize that Title I is not a program of general aid, such abuses have been considerably diminished. See comments on the recent administration of ESEA in Donald W. Burnes, "A Case Study of Federal Involvement in Education," in Mary Frase Williams, ed., *Government in the Classroom*, New York, NY, The Academy of Political Science, 1978, p. 89.

¹⁶Wirt and Kirst write that "[T]he performance of the states varies enormously, often depending . . . on the particular state political culture." *Op. cit.*, p. 159. See also Joel S. Berke and Michael W. Kirst, *Federal Aid to Education: Who Benefits? Who Governs?*, Lexington, MA, D.C. Heath & Co., 1972.

¹⁷Burton Friedman and Laird Dunbar, *Grants Management*

in Education: Federal Impact on State Agencies, Chicago, IL, Public Administration Service, 1971, p. 52.

¹⁸Edith K. Mosher, "Education and American Federalism: Intergovernmental and National Policy Influences," in Jay Scribner, ed. *The Politics of Education*, Chicago, IL, National Society for the Study of Education, 1977, p. 118.

¹⁹Quoted in Orfield, *Congressional Power, op. cit.*, p. 154.

²⁰*Ibid.*, p. 134. This section rests heavily on his account.

²¹*Ibid.*, p. 133.

²²*Ibid.*, p. 136.

²³*Ibid.*, p. 137.

²⁴Quoted in Lucille Eddinger, "CPR Lobby Profile: Full Funds for Education?," *National Journal*, Washington, DC, November 1, 1969, p. 49. See also "Administration, Lobbies Put Pressure on Capitol Hill to Vote 'Right' on Veto," *National Journal*, January 24, 1970.

²⁵John Osborne, quoted in Orfield, *Congressional Power, op. cit.*, p. 174.

²⁶*Ibid.*, p. 179.

²⁷*Ibid.*, p. 182. P.L. 92-318, Title VII.

²⁸*Ibid.*, p. 80.

²⁹Ed Willingham, "Nixon Administration Seeks Massive Change in Federal School-Aid Procedures," *National Journal*, Washington, DC, February 13, 1971, p. 324.

³⁰*Ibid.*

³¹This was a series of six large consolidations of existing federal programs in community development, employment and training, transportation, rural development, law enforcement, and education.

³²H.R. 7796 and S. 1669, 92d Cong., 1st Sess., 1971.

³³Quoted in Karen DeWitt, "Administration Revenue-Sharing Plan Unlikely to Get Passing Grade from Congress," *National Journal*, Washington, DC, March 24, 1973, p. 421.

³⁴Quoted in Orfield, *Congressional Power, op. cit.*, p. 166.

³⁵Quoted in *ibid.*, p. 163.

³⁶Quoted in *ibid.*, p. 166.

³⁷*Ibid.*, p. 167.

³⁸For example, Assistant HEW Secretary Sidney Marland announced in January 1973, that alternatives to ERS were "irrelevant." "We stand on ERS, live or die." Quoted in DeWitt, *op. cit.*, p. 418.

³⁹P.L. 93-380, Title IV. See Stafford Smiley, "The Elementary and Secondary Education Amendments of 1974," *Harvard Journal on Legislation*, 12, Cambridge, MA, April 1975, pp. 447-494.

⁴⁰Quoted in Orfield, *Congressional Power, op. cit.*, p. 169.

⁴¹*Ibid.*, pp. 164-165.

⁴²*Serrano v. Priest*, 483 P.2d 1241, 1244 (Cal. 1977). The U.S. Supreme Court, in a separate case—*Rodriguez v. San Antonio*—refused to uphold the principle elaborated in the *Serrano* case. See discussion of the *Rodriguez* case in the next chapter, "The Role of The Federal Courts in Education."

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The Role Of The Federal Courts In Education

The federal judicial role in education has become extremely important since the early 1950s. Today, an average citizen in Boston, Louisville, or Denver might well consider the courts to be a more significant form of federal involvement in local schools than federal grants-in-aid or regulations. As Alan Cambell writes, "in the field of education, no, single public decision has had more impact than the *Brown vs. [Board of Education of] Topeka* decision requiring the desegregation of the schools."¹ Similarly, John Hogan explains that:

The modern trend in decisional law is toward "education under supervision of the courts." . . . Not only do the courts today decide more cases affecting the schools, but also when they issue mandates, orders, and decrees they retain jurisdiction over the cases to assure that their orders are effectively carried out. . . . The roots of this new judicial function can be traced to about 1950, when erosion of the "classical view" of education as exclusively a state and local function began and when the federal courts . . . recognized that certain policies and procedures of the public schools failed to meet Constitutional requirements of the First and Fourteenth Amendments.²

Table 9

**FEDERAL COURT CASES AFFECTING
SCHOOL ORGANIZATION,
ADMINISTRATION, OR PROGRAMS^a,
1789-1971**

Period	Federal Court Cases ^d
1789-1896 ^b	50
1897-1906	15
1907-1916	22
1916-1926	44
1926-1936	67
1936-1946	88
1946-1956	112
1956-1966	729
1967-1971 ^c	1,273
Total	2,400

^aEstimated.

^b107-year period.

^cFive-year period (incomplete because 1971 cases were still being reported.)

^dIncludes cases decided by the lower federal courts and the Supreme Court of the United States.

SOURCE: John C. Hogan, *The Schools, The Courts, and The Public Interest*, Lexington, MA, D.C. Heath & Co., 1974, p. 7.

The judicial role in education has grown in both scope and scale. The increased influence of the courts on educational policy over time can be clearly seen in Table 9, which traces the trend in legal cases affecting education. In the five-year period from 1966 to 1971, there were nearly twice as many education cases as in the decade from 1956 to 1966 and approximately ten times as many cases than the 1946 to 1956 period.³ Correspondingly, the scope of court involvement has grown as well. Besides a central focus on race discrimination in education, court decisions affect major issues of church and state, student and teacher rights, and curriculum.

THE JUDICIAL ROLE IN SCHOOL DESEGREGATION

The era of a major role for the courts in educational policymaking can be traced most directly to the Supreme Court's decision in *Brown v. Board of Education*⁴ in 1954, in which

the Court declared segregated schools to be "inherently unequal" and thus in violation of the Fourteenth Amendment of the Constitution.⁵ This began the school desegregation effort that revolutionized elementary and secondary education in the south and that has led in recent cases to intense court involvement in the daily operations of certain schools throughout the country.

The degree of judicial intervention in educational administration did not increase immediately following the *Brown* decision. Rather, it evolved over the course of the next 15 to 20 years. A degree of precedent for *Brown*, itself, had been incrementally developed in a series of cases concerning education before 1954.⁶ The unequivocal ruling of *Brown* departed from this incremental pattern of Constitutional interpretation, but the bold new interpretation was implemented slowly under the doctrine of "all deliberate speed." As Martin Shapiro observes:

Perhaps the most startling thing about the whole school desegregation pattern was that between *Brown II* in 1955 and *Swann v. Charlotte-Mecklenberg* in 1971, the record is relatively devoid of Supreme Court decisions implementing great policy pronouncement. . . . Aside from its quite indefinite instructions on speed, the Court issued some equally indefinite instructions on the substance of desegregation plans.⁷

The task of enforcing local desegregation during this time was left to lower federal courts responding to complaints filed against individual school districts. From time to time, the Supreme Court made unequivocal pronouncements on the unconstitutionality of dual school systems, but it left the specifics of implementation largely unexamined. Orfield describes the limitations that characterized this mode of enforcement:

The lawyers' effort was prodigious but the results were meager, although eventually they did manage to eliminate the unconstitutional "massive resistance" laws in most states. The desegregation process began in larger

districts. The pace [was] accelerated slightly . . . by a supportive Kennedy government, but only about one black child in 50 was in a desegregated school after ten years.⁸

Accordingly, effective enforcement of desegregation largely awaited the *Civil Rights Act of 1964*, which established new enforcement mechanisms (such as federal aid cutoffs under Title VI) and provided federal enforcement personnel in the Departments of Justice and HEW. This proved fairly successful in the rural south where blacks and whites often lived in close proximity:

The enforcement of the 1964 law broke the logjam of resistance. By the end of the Johnson Administration most of the rural south had desegregated and the Executive Branch initiative had stimulated much tougher judicial requirements.⁹

After 1968, the locus of desegregation efforts began shifting back to the federal courts. While the Departments of Justice and HEW diminished their desegregation activities under the Nixon Administration,¹⁰ the Supreme Court became increasingly active in questions of implementation. Although lower court implementation of *Brown* had often been slow, by the late 1960s there had developed conflicting techniques and interpretations of implementation which required clarification. In 1968, the Supreme Court declared unconstitutional "freedom of choice" and "free transfer" desegregation plans which served to undermine integration. It required integration plans that "promise . . . to work now."¹¹ In 1969, the Court pronounced an end to the policy of "all deliberate speed" and declared that "the obligation of every school district is to terminate dual school systems at once."¹² In 1971 the Court upheld the use of citywide busing to achieve integration of a major urban school system.¹³ And in 1973, the Supreme Court accepted a broader definition of discriminatory practices in education with major implications for the north.¹⁴

As defined by this series of cases, the current Constitutional policy concerning racial dis-

crimination in education is that dual systems of education are unconstitutional. The concept of "state action," which is crucial in distinguishing *de jure* from *de facto* segregation—and thus establishing violation of the Fourteenth Amendment, has been broadened in cases such as *Keyes*. It now includes both the maintenance of segregated schools, previously common in the south, as well as less extreme methods like racially motivated student assignments and school siting more typical of discrimination in the north (as in Denver and Boston). Similarly, the legal remedies available to redress discriminatory practices have been expanded to include a broad arsenal of techniques, ranging from court-ordered busing to determining teacher assignments, hiring patterns, school construction, and educational programs. Thus, the scope of federal court involvement in education where factors of racial discrimination are present has grown extraordinarily large, as major Constitutional scholars agree:

As southern school administrators compiled a record of bad faith and delay, black groups presented more and more detailed desegregation plans to the district courts for imposition on those administrators. . . .

Implementation became administration in the most literal sense. Litigation took the form of presenting alternative detailed desegregation plans with the judge choosing one or the other or devising his own combination. The district judge thus came to make decisions on such things as school personnel management, building maintenance, attendance reporting, and so on.¹⁵

Local governance of the schools in some districts in the south has been critically circumscribed (if not virtually eliminated) where it has been used by the people to perpetuate discrimination based on race. So fundamental a matter as the right of a school district governing board to sell property has been placed under the necessity for prior court approval, as has the decision to build and where to lo-

cate new school buildings, the appointment of principals and other key school personnel, and so forth.

In the area of school governance, therefore, the requirements of the new equal protection encompass almost the whole of the state *Education Code*. . . .¹⁶

In major metropolitan areas the court decrees that require extensive busing in order to achieve racially balanced schools have all the qualities of social legislation: they pertain to the future; they are mandatory; they govern millions of people; they reorder people's lives in ways that benefit some and disappoint others in order to achieve social objectives. I can think of no earlier decrees with these characteristics in all our Constitutional history.¹⁷

It is noteworthy, however, that some potential expansions of federal involvement have not been developed. Most importantly, the distinction between de jure and de facto segregation has not been abandoned, despite the broadening interpretation of what constitutes state action. To date, de facto segregation has not been declared unconstitutional, even though it is the primary cause of educational segregation in the north. Furthermore, the Supreme Court has resisted expanding desegregation efforts to include entire metropolitan areas. Unless direct and substantial involvement in discriminatory practices can be traced to surrounding communities, the Court is unwilling to overrule considerations of local autonomy in education.¹⁸

OTHER EQUAL PROTECTION ISSUES

Following the successful application of the Equal Protection Clause to cases of racial segregation, recourse to the newly receptive courts was attempted by a number of other groups claiming educational discrimination. They argued that the legal reasoning that prohibited discrimination based upon race also applied to discrimination on the basis of men-

tal or physical handicap, linguistic ability, sex, or wealth of neighborhood.

Beginning in 1970, parental challenges to local education practices that excluded handicapped children from a public education on the grounds that they could not profit from an education began to meet with success. Two precedent-setting right-to-education lawsuits, decided on the basis of the Fifth and Fourteenth Amendments, were *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania*¹⁹ in 1971 and *Mills v. Board of Education of the District of Columbia*²⁰ in 1972. In the former, PARC brought a class action suit on behalf of all mentally retarded children in a federal district court. The consent decree in that case stated that "providing free education to nonhandicapped children while depriving youngsters with mental handicaps of an equivalent right established a colorable constitutional claim."²¹ The *Mills* suit shortly thereafter extended the "right to an education," as well as due process protection, to all handicapped children, not just the retarded. Both of the cases, it should be noted, were decided prior to the passage of either Section 504 of the *Rehabilitation Services Act of 1973* or the *Education for All Handicapped Children Act of 1975*.

Other groups, such as non-English-speaking students and girls and women have not met with such unequivocal success in their claim to a Constitutional guarantee of equality of educational opportunity, although clear-cut cases of gross discrimination have been outlawed. For instance, a potential expansion of the equal protection rationale has not been developed in cases relating to sex bias in education. In particular, the Supreme Court has not included sex with race in the special category of "suspect classifications" which demand "strict scrutiny" under the Equal Protection Clause. Such a classification would shift the burden of proof in sex discrimination cases from the normal presumption in favor of the questioned educational policy, requiring a plaintiff's demonstration of Constitutional violation, to a presumption opposed to any sexual classification, absent a demonstration of overriding state interest in the policy. Given the difficulty of defining sexual equality in cases other than those involving a demonstra-

ble exclusion, the courts have tended to rely on the Legislative and Executive Branches to address most of the sex discrimination questions. Thus, the task of the courts has become one of interpreting the broad language of legislation such as Title IX rather than the language of the Equal Protection Clause. In these cases, however, the courts have appeared willing to uphold the withdrawal of federal funds where grant recipients fail to comply with federal law.²²

A similar pattern is evident in the Supreme Court's decision regarding bilingual education in *Lau v. Nichols*.²³ In this case, the Court held that the City of San Francisco violated Title VI of the Civil Rights Act by failing to provide special education for non-English-speaking children of Chinese descent. This ruling has meant that all schools that receive federal grants are contractually bound to provide some type of special instruction to non-English-speaking children by virtue of the Civil Rights Act. Importantly, however, the Court did not base its decision on the Fourteenth Amendment, as the plaintiffs had requested, nor did it require bilingual education as the only possible remedy. It thus rendered the issue subject to Congressional alteration through a change in the law. One legal scholar argues that this "choice of legal standards was not inconsequential."²⁴ Rather,

Lau's reliance on federal statute rather than the Equal Protection Clause may have presaged a new mode of interplay between courts and legislatures. The courts have established Constitutional minima concerning most of the equal opportunity claims. It is now the province of the political system to give more detailed meaning to the minima and to secure the resources needed for their implementation.²⁵

The judicial unwillingness to expand equal protection guarantees has been most pronounced in the area of educational finance. The Supreme Court's position was clearly enunciated in *San Antonio v. Rodriguez* in which the Court refused to overturn the Texas system of educational finance on equal protection grounds.²⁶ The plaintiffs in this case argued

that reliance on the local property tax to finance education produced such broad disparities in educational spending among school districts as to preclude equal treatment under the laws. Since the property tax is used widely throughout the country to finance education, the implications of this case for the structure and operation of American education were enormous.

The Supreme Court, however, repudiated this Constitutional interpretation. It refused to apply the suspect classification to the educationally deprived. Moreover, it declared that education, while important, is not a basic Constitutional right.²⁷ It thus held that a decentralized system of education may reflect a legitimate state interest:

The Constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest. . . . We hold that the Texas plan abundantly satisfies this standard.²⁸

Perhaps in response to the difficulties of desegregation cases, and lacking surer Constitutional guidance, the Court also argued that it lacked capacity to make judgments in this area superior to those of state and local authorities.²⁹ For all of these reasons, it chose restraint over an extension of Fourteenth Amendment guarantees to the area of educational finance.

There is a certain irony in the Court's responses to the plaintiffs in these cases. Most of the groups pressing claims have received a sympathetic hearing by the Court and frequently a favorable ruling. Many of the decisions, in fact, have had tremendous operational and financial implications for school districts. At the same time, the hope of educational reformers that equal opportunity goals could be achieved more quickly and more completely through the courts than through the political process has not been realized. The courts have become increasingly uneasy about expanding Constitutional guarantees in the face of subtle and controversial questions of equal protection, and there appears to be a growing sensitivity to the limitations of judicial solutions to political problems of distributive justice.

THE FIRST AMENDMENT CASES: RELIGION AND FREE SPEECH

Another major area of judicial involvement in American education involves First Amendment issues. There are two broad categories here: (1) Issues of church and state, based upon the establishment and free exercise clauses of the Constitution, which read: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These clauses have important implications for parochial school finance and public school curriculum and procedures. (2) Issues concerning freedom of expression in the schools, derived from the Constitutional dictate: "Congress shall make no law . . . abridging the freedom of speech." Largely by virtue of recent cases, this clause now has implications for educational issues like free expression by students and teachers and certain other matters of student rights.

RELIGION AND THE SCHOOLS

Apart from racial discrimination, this may be the most important and far reaching area of court involvement in education. The object of court activity has been to balance the potentially conflicting implications of the establishment and free exercise clauses. On the one hand, the Supreme Court has not allowed governmental support of a particular religion or religion in general. On the other hand, the Court has sought to avoid a situation of governmental hostility toward religion. This tension has led the Court to experiment with a number of legal guidelines in this area: a wall of separation between church and state, governmental neutrality, and no excessive entanglement.³⁰

One cluster of religious cases has dealt with questions of governmental aid to parochial schools. This issue created long-standing political difficulties for Congress in the development of federal aid to education, and it has proved complicated for the courts as well. In *Everson v. Board of Education*,³¹ the Supreme Court upheld a New Jersey law allowing public transportation reimbursements to parents of parochial (as well as public) school children. The Court has also upheld:

- the granting of tax exempt status for property used only for religious purposes,³²
- the lending of state-approved textbooks to parochial school students.³³

However, direct state aid to parochial schools has been held unconstitutional, as has a state program of tuition tax credits to parents of parochial school children.³⁴

A second cluster of religion cases has involved educational curriculum and procedures. Since 1920, the Court has affirmed the right of parents to send their children to private rather than public schools, although this right is not absolute.³⁵ The Court has also upheld "released time" programs of religious instruction in which students are allowed to leave public schools for a portion of the school week to attend religious instruction elsewhere.³⁶ In a tremendously controversial case, however, the Supreme Court struck down state laws requiring recital of prayers in the public schools.³⁷ The Court declared that only the "objective" study of religion, "part of a secular program of education," would be permissible in the public schools.³⁸ State laws that prevent the teaching of Darwinian theories of evolution have also been held unconstitutional.³⁹

With the number of conflicting decisions on religious questions, attempting to determine the composite influence of the Court on the church-state issue in education is difficult. One scholarly observer has concluded that, on balance, the Court's decisions have been weighted toward secularism:

With the exception of permitting states to provide bus transportation and books to students attending private schools, the Supreme Court has religiously struck down all other attempts to aid sectarian elementary and secondary schools. Further, the objective study of religion . . . seems to encourage a mental attitude of distance and reservation with regard to religion, the very opposite of commitment. The implicit message . . . is . . . that religion should be approached from the outside, as a cultural phenomenon. . . . Thus, despite the Supreme Court's statement that public schools may not promote a religion of secularism, its

rulings in many respects seem to leave the schools with no alternative but to offer at least a nonmilitant form of secularism.⁴⁰

EDUCATION AND FREE SPEECH

This area has been less developed Constitutionally than church-state relations, but certain issues have been ruled on here. In general, the Supreme Court has dealt with questions involving free expression by students and teachers and the extent to which schools can impose certain ideas and values on students and teachers, versus promoting an educational "marketplace of ideas."⁴¹ Specifically, the Court has ruled that state laws requiring students to salute the flag or pledge allegiance violate the First Amendment.⁴² Much more recently, the Supreme Court has recognized the right of students to express political beliefs in school in a nondisruptive manner, such as wearing armbands to protest the Vietnam War. The Court declared that "It can hardly be argued that either students or teachers shed their Constitutional rights to freedom of expression at the schoolhouse gate."⁴³

Similarly, state laws requiring that teachers disclaim membership in the Communist Party or disavow advocacy of the violent overthrow of the U.S. government have been found unconstitutional, although teachers can be required to pledge to uphold the Constitution.⁴⁴ The Supreme Court has also upheld teachers wearing armbands and refusing to salute the flag. As Tyll van Geel summarizes the Court's holdings on free speech in education: "[T]o an extent, the schools must remain open forums for the expansion of political ideas—even those with which the school board officials disagree."⁴⁵

THE JUDICIAL ROLE IN EDUCATION: AN OVERVIEW

Federal court involvement in elementary

and secondary education has grown enormously in recent decades. The courts have become deeply involved in certain areas like race discrimination, and the scope of issues touched on by the courts has grown broad. As van Geel argues, however, the depth of judicial involvement in many areas is shallow and irregular:

The breadth of involvement of the federal courts in shaping the educational program to which children may be exposed is impressive. . . . They involve themselves in the religious, political, and cultural content of the school program as well as concern themselves with the minimal adequacy of the school program. . . . But breadth of involvement should not be mistaken for depth of involvement. In many respects the courts have restrained themselves, placing sharp limits on how far they are willing to go in executing these various roles.⁴⁶

A marked tendency toward judicial modesty now characterizes many Supreme Court decisions:

Many of the post *Rodriguez* decisions reveal a renewed respect for the shadowy but nonetheless real demarcation between Constitutional problem solving and problem solving generally. . . . Today, courts are inclined to stay their hand, relying on the political process to resolve questions of distributive justice as these affect the allocation of particular goods such as education.⁴⁷

Thus, while the courts will remain important federal actors in elementary and secondary education, the judicial boldness of earlier decades seems to have moderated since the *Rodriguez* decision.

FOOTNOTES

¹Quoted in Michael W. Kirst, ed., *The Politics of Education at the Local, State, and Federal Levels*, Berkeley, CA, McCutchan Publishing Corp., 1970, p. 322.

²John C. Hogan, *The Schools, The Courts, and The Public*

Interest, Lexington, MA, D.C. Heath & Co., 1974, pp. 9-10.

³*Ibid.*, p. 7.

⁴347 U.S. 438 (1954).

⁵This reads, in part: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

⁶*Sweatt v. Painter*, 339 U.S. 629 (1950); and *McLaurin v.*

- Oklahoma State Regents, 339 U.S. 637 (1950).
- ⁷Martin Shapiro and Douglas Hobbs, *The Politics of Constitutional Law*, Cambridge, MA, Winthrop Publishing Co., 1974, p. 508.
- ⁸Orfield, *Must We Bus?*, *op. cit.*, p. 362.
- ⁹*Ibid.*
- ¹⁰*Ibid.*, pp. 280-281.
- ¹¹*Green v. County School Board*, 391 U.S. 430 (1968), *Monroe v. Board of Commissioners*, 391 U.S. 377 (1968), quoted in Shapiro and Hobbs, *op. cit.*, p. 522.
- ¹²*Alexander v. Holmes City Board of Education*, 396 U.S. 19 (1969), quoted in *ibid.*
- ¹³*Swann v. Charlotte-Mecklenburg*, 402 U.S. 1 (1971).
- ¹⁴*Keyes v. School District #1, Denver CO*, 413 U.S. 189 (1973).
- ¹⁵Shapiro and Hobbs, *op. cit.*, pp. 510, 511.
- ¹⁶Hogan, *op. cit.*, p. 155.
- ¹⁷Archibald Cox, *The Role of the Supreme Court in American Government*, New York, NY, Oxford University Press, 1976, p. 77.
- ¹⁸*Milliken v. Bradley*, 418 U.S. 717 (1974).
- ¹⁹*Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania*, 343 F. Supp. 279 (E.D. PA, 1972) (consent decree).
- ²⁰*Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972).
- ²¹David L. Kirp, "Law, Politics, and Equal Educational Opportunity: The Limits of Judicial Involvement," *Harvard Educational Review*, 47, Cambridge, MA, May 1977, p. 130.
- ²²Ralph Stern, "Public Education," *The Urban Lawyer*, 10, Summer 1978, p. 503.
- ²³*Lau v. Nichols*, 414 U.S. 563 (1974).
- ²⁴Kirp, *op. cit.*, p. 134.
- ²⁵*Ibid.*
- ²⁶*San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).
- ²⁷"Education . . . 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." *San Antonio v. Rodriguez*, in Shapiro and Hobbs, *op. cit.*, p. 481.
- ²⁸*Ibid.*, p. 483.
- ²⁹*Ibid.*, pp. 481-482. See also Joel S. Berke, *Answers to Inequity: An Analysis of the New School Finance*, Berkeley, CA, McCutchan Publishing Corp., 1974.
- ³⁰Shapiro and Hobbs, *op. cit.*, p. 240.
- ³¹330 U.S. 1 (1947).
- ³²*Walz v. Tax Commission*, 397 U.S. 644 (1970).
- ³³*Board of Education v. Allen*, 392 U.S. 371 (1971).
- ³⁴*Lemon v. Kurtzman*, 403 U.S. 602 (1971), and *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973).
- ³⁵For example, the schools must meet state standards. *Pierce v. Society of Sisters*, 268 U.S. 510 (1920).
- ³⁶*Zorach v. Clauson*, 343 U.S. 306 (1952).
- ³⁷*Engel v. Vitale*, 370 U.S. 421 (1962).
- ³⁸*School District of Abington v. Schempt*, 374 U.S. 203 (1963), in Shapiro and Hobbs, *op. cit.*, p. 254.
- ³⁹*Epperson v. Arkansas*, 393 U.S. 97 (1968).
- ⁴⁰Tyll van Geel, *Authority to Control the School Program*, Lexington, MA, Lexington Books, 1976, pp. 20, 22.
- ⁴¹*Ibid.*
- ⁴²*West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943). This was one of the early cases in which the Court began extending the provisions of the Bill of Rights to the states, by virtue of the Fourteenth Amendment.
- ⁴³*Tinker v. Des Moines School District*, 393 U.S. 503 (1969), quoted in Shapiro and Hobbs, *op. cit.*, p. 428.
- ⁴⁴*Keyishian v. Board of Regents*, 385 U.S. 589 (1967).
- ⁴⁵Tyll van Geel, *op. cit.*, p. 28.
- ⁴⁶*Ibid.*, pp. 41-42.
- ⁴⁷Kirp, *op. cit.*, pp. 132, 136.

Contemporary Issues Of Federal Involvement In Education

By the end of the 1970s, the agenda of educational issues had shifted dramatically. No longer was there much serious debate over the appropriateness of any federal role in education, even though in earlier decades that controversy had clearly dominated. By 1980, neither the existence nor the categorical nature of ESEA was in jeopardy, although the specifics of the program were still being altered *regularly*. *Because of improvements in the administration of the program and in the allocation of formulas*, Title I money was generally considered to be fairly successfully targeted to concentrations of children of low income families, and in contrast to the earlier years of the program, Title I funds were not being used as frequently for general aid. Furthermore, at least some Title I programs had been shown to have a significant positive effect on learning.¹ However, the cost of these improvements in the program was a diminution of the discretion that had previously been afforded state and local officials and, to a certain extent, even federal program administrators. For example, the *Education Amendments of 1978* illustrated the tendency of Congress to write increasingly detailed legislation and to specify carefully administrative procedures in planning and in expending and monitoring funds. Originally consisting of only nine pages, Title I now requires 47 pages to authorize the same basic program. Moreover, that legislation also dis-

mantled what little program consolidation had been established in the 1974 amendments and created some 16 new special-purpose programs, such as metric education—illustrating the continuing Congressional preference for categorical programs.²

In large part the focus of controversy shifted away from ESEA because, although state and local discretion in the administration of ESEA had been reduced, it is still relatively well funded. In contrast, some of the newer regulatory programs impose huge costs on states and local school districts but provide little federal reimbursement. Thus, the focus of controversy has shifted to federal regulation of education. Additional items on the education agenda by the end of the decade were the creation of a federal department of education and the attempted enactment of elementary and secondary tuition tax credits. Both issues could well have important implications for the federal role in education in future years and will be discussed in more detail in this chapter.

FEDERAL REGULATION OF ELEMENTARY AND SECONDARY EDUCATION: A CONTINUING CONTROVERSY

As previously shown, federal control of education has been a matter of concern from the earliest federal aid proposals. Federal regulation has been a central issue of implementation since 1965. Initial regulations resulted largely from three factors already discussed: the categorical character of ESEA, the requirements of program evaluation, and the Title VI civil rights provisions. Recently, however, additional regulations and grant conditions have been attached to federal aid to education, mostly of an “across-the-board” nature (thus, applying to federal assistance in general). These new regulations have prompted a recent article entitled “The Federal Takeover: Should the Junior Partner Run the Firm?,” in which the Illinois Superintendent of Schools writes:

... state and local taxes together still account for more than 90% of the dollar outlay for public schools in this nation. Yet the amount of federal regu-

lation has increased in ways disproportionate to the amount of federal dollars received... [S]lowly, inexorably, and incrementally, the federal government is taking over education. Especially since 1965, the country has moved—almost every year—toward a national system of education... By 1980 the phenomenon of “federal takeover” may appear to be an understatement of the problem.³

This represents a powerful indictment of current federal policies in education. It is largely based on new federal laws requiring increased educational access and services for the handicapped, new protections of student rights, and various protections against race and sex discrimination. Numerous problems have been associated with such requirements, including:

- Large scale costs of compliance: new laws benefiting the handicapped have been identified as particularly expensive, posing “a huge financial burden for school districts.”⁴
- Alteration of local priorities and procedures: this includes providing new programs and services for federal target groups (like the mentally and physically handicapped); equalizing services and programs, as in the case of girls' sports under Title IX; and adopting new procedures on the access and distribution of student records under the *Buckley Amendment*.
- Vast amounts of new paperwork: the House Committee on Education and Labor has noted that:

The enormous amount of paperwork involved in administering federal education programs has become a major source of complaints from state and local participants in federal programs... One state superintendent testified that federal education programs are responsible for 84% of the data burden in that state, although the federal government provides only 7% of the state's total funds for education.⁵

Although it is difficult to gauge the genuine extent and seriousness of problems caused by federal regulatory efforts, the situation so confounds the traditional notion of local control of education that it demands close examination.

RECENT ADDITIONS TO FEDERAL REGULATION

New regulations affecting elementary and secondary education include both measures aimed specifically at educational institutions and across-the-board regulations which affect the broad range of federal grant recipients. An example of the former is the federal regulation that addresses sex discrimination practices in education. Title IX of the *Education Amendments of 1972* states that no person: "shall, on the basis of sex, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under, any educational program or activity receiving federal financial assistance."⁶ At the elementary and secondary level, this act has had particularly important implications for vocational, athletic, and extracurricular programs. For example, the provision of equal sports facilities and programs for girls has been a major focus of attention.

Another example of a recent regulation aimed at educational institutions is the *Family Educational Rights and Privacy Act of 1974* (FERPA), or the Buckley Amendment.⁷ This act concerns access to student records in the local schools. Specifically, it requires that schools permit student and parental assessment of the accuracy of records, while at the same time limiting disclosure of records to others.

An example of an across-the-board requirement affecting federal grant recipients is the *Rehabilitation Services Act of 1973*, which requires that federal grant recipients provide increased access to the handicapped. Section 504 of the act states that "no otherwise qualified individual . . . shall . . . be excluded from participation in . . . any program or activity receiving federal financial assistance."⁸ This act has been supplemented in elementary and secondary education by the *Education for All Handicapped Children Act of 1975*.⁹ Among other things, this law requires that participating states provide a "free and appropriate education" to all handicapped children and that local

school authorities prepare an individualized educational program for each handicapped child. It also establishes due process procedures to guarantee the educational rights of handicapped students and promotes the "mainstreaming" of handicapped children.¹⁰ The funding formula authorized the federal government to pay for 5% of the cost of services in the first year, with the percentage increasing to a permanent 40% in 1982. However, because appropriations have not equaled the authorization levels, the federal government is currently subsidizing only 12% of the cost to states and local school districts.

THE POLITICS OF REGULATION

There is general agreement that Congress has been primarily responsible for most of the recent regulatory provisions in education. Cronin is absolute on this point: "[T]he Congress, far more than HEW, has written in the need for dozens of new reports and regulations."¹¹ Samuel Halperin, former Assistant Secretary of HEW, agrees, adding that growing budgetary pressures in Washington have made regulation increasingly attractive:

Congressmen see themselves as having been elected to legislate. Confronted with a problem and a showing that other levels of government are "defaulting," their strong tendency is to pass a law. Ten years ago, money was Washington's antidote for problems. Now, the new fiscal realities . . . mean that Congress provides fewer dollars. Still determined to legislate against problems, Congress uses sticks instead of carrots.¹²

The crucial Congressional role in educational regulation can be seen in the legislative histories of these laws. Title IX of the *Education Amendments of 1972*,¹³ which prohibits sex discrimination in educational admissions, facilities, and practices, was authored by Rep. Edith Green (D-OR) following Congressional hearings that indicated sex discrimination problems in education.¹⁴ For the most part, education groups considered the issue of relatively minor importance.¹⁵ In fact, apart from

its effect on college admissions, the implications of Title IX were overlooked by Congress as well as the interest groups. As Fishel and Pottker explain:

Without any organized opposition, and with Green pressing hard for adoption, the conference committee quickly adopted Title IX without giving much consideration to its eventual impact.¹⁶

It was treated mainly as a symbolic gesture, leaving legislative intent undefined:

When Congress passed Title IX in 1972, it was voting for a general principle of equality; the specific implications of the law were understood by few members of Congress. . . . Congress made no attempt to provide a clear and complete definition of what constituted sex discrimination in education. As a result, the real public debate on the issues involved in eliminating sex discrimination followed, rather than preceded, the passage of the law.¹⁷

Hasty Congressional consideration characterized other regulatory enactments as well. FERPA was introduced and adopted as a floor amendment to the *General Education Provisions Act of 1974* by Sen. James Buckley (R-NY). Stimulus for the law came from studies and court cases documenting recordkeeping abuses in elementary and secondary education.¹⁸ However, the amendment "had not been the subject of Congressional hearings," and "professional educators were not involved in drafting the original legislation or even aware of its existence."¹⁹ It originally proved so defective that it was amended by Congress within a matter of months.

Section 504 of the *Rehabilitation Act*, which prohibits discrimination against the handicapped by federal grant recipients, presents another example.

[It] was subjected to no public hearings and few floor debates of any substance. . . . Moreover the scanty legis-

lative history and broad language of the provision prevented federal agencies from developing regulations and required Congress to further define its intent in a 1974 amendment to the *Rehabilitation Services Act*.²⁰

Even the *Education for All Handicapped Children Act*, which was four years in the making and the object of a massive lobbying campaign by special educators and parents of handicapped children, was passed by Congress over strong Presidential objections. The original impetus of the act was twofold. First, it was designed to assist handicapped children whose needs were not being met by the states. Congress was concerned with reports that half of the nation's handicapped children were receiving an inadequate education and that many were receiving no education at all.²¹ Secondly, it was designed to relieve the fiscal pressures on states and localities resulting from court cases dealing with the education of handicapped children.²² The act provided grants to support the education of the handicapped, while drawing heavily on the legal decisions for objectives and procedures in the law.²³

The Ford Administration opposed the legislation for two reasons. It first of all believed the provision of education to the handicapped to be a state and local responsibility.²⁴ Secondly, it opposed the large authorizations proposed in the bill—over \$2 billion in the Senate by 1979, almost \$4 billion in the House. A veto was threatened. In response, the legislation's authorizations were drastically reduced (to \$100 million in 1976), and the federal role was altered from relieving the state-local fiscal burden to providing an "assist." Despite the concern about the regulatory aspects of the legislation, which were retained despite the massive cuts in authorizations, the bill passed Congress by huge majorities and was reluctantly signed by President Ford.

Thus, Congress has clearly dominated in the formulation of regulatory policy in education. Frequently, the legislation to emerge from Congress has been vaguely worded and hastily considered, leaving the bureaucracy with the difficult task of interpreting and implementing the law. Executive Branch agencies are often confronted by strong Congressional statements

of lofty purpose, with little guidance for weighing costs and benefits in implementing them. In the case of FERPA, the Privacy Commission Report observed that:

Because there had been no national debate or public hearings on the measure, and only a minimum of Congressional debate, neither the affected parties . . . nor the Department of Health, Education, and Welfare, which had to develop regulations to implement the act, received much guidance on the manner in which the act should be interpreted.²⁵

The same was true of Title IX:

Because of the absence of an extensive legislative history, exactly what Congress had intended when it passed the law was unclear in many areas. . . . Because of the absence of any kind of consensus, DHEW policymakers felt free to decide issues as they thought, best from legal and policy perspectives.²⁶

The failure of Congress to weigh the trade-offs inherent in regulatory provisions may not be corrected in the agency charged with enforcement. Rochelle Stanfield suggests that this has been the case with regulations on the handicapped:

[The] head of the technical assistance unit of the [HEW] . . . Office of Civil Rights . . . argues that . . . the costs [of the section 504 regulations] are irrelevant . . . because basic civil rights are involved. . . . His colleague . . . who wrote Sec. 504 regulations added: "Someone's rights do not depend upon someone else's ability to pay. It is a matter of the right to participate in American society."²⁷

The regulatory measures have aroused considerable concern among state and local education officials, as the comments of State Superintendent Cronin, noted earlier, make clear, and

the Congress has not been altogether impervious to this critical political feedback. Various measures to address regulatory problems have been advocated or advanced. The *Buckley Amendment* underwent some alteration, and Title IX was nearly modified by Congress as well. Education block grant proposals continue to be offered as solutions to federal regulation, although they have fared poorly in Congress.²⁸

More importantly, these critiques of federal involvement have influenced the reauthorization of federal aid. To date, fundamental changes in programs and regulations have not been made, but the Congress has shown increased sensitivity to regulatory problems. Hearings were held by the House Education Subcommittee on Paperwork Problems in Federal Aid.²⁹ As the Committee report observed:

The committee has uncovered instances of inefficient, duplicative, and useless federal data collection which . . . can be remedied without harming the integrity of federal data collection.³⁰

The 95th Congress passed several provisions for reducing federal paperwork requirements, such as allowing a single state plan for all education programs.³¹ In April 1980, the Department of Education issued general regulations that apply to all direct grant and state-administered education programs. The new regulations seek to consolidate and simplify more than 1,000 separate program regulations and definitions, many with differing requirements, into one set of regulations. Although these actions only begin to address the regulatory issue, they do suggest a potential for response.

A FEDERAL DEPARTMENT OF EDUCATION

In 1975, as a Presidential candidate, Jimmy Carter promised to create a separate department of education to bring more visibility to educational issues and better coordination among federal education programs. Carter's pledge helped to earn him the first NEA Presidential endorsement in history. Rather than uniting the education community, however, the

reorganization proposal only served to widen existing divisions—between the traditional professionally oriented NEA and the labor-oriented American Federation of Teachers (AFT), between the elementary and secondary education groups and the higher education groups, between public school supporters and private or parochial school supporters, and among the multitude of organizations that represent a particular clientele group (such as handicapped children or ethnic minorities) and compete for a limited education budget.

The AFT opposed a separate department as did the National Catholic Education Association, several higher education groups and prominent university presidents, and a variety of labor and civil rights groups. The NEA, on the other hand, led a broad coalition of groups, including five other major elementary and secondary education groups,³² several major higher education groups, many of the advocates for special categories of children, and some labor groups such as the United Auto Workers.

The education community agreed that education suffered from low visibility within the bureaucracy, that education programs were poorly coordinated, and that funding levels were inadequate. The source of contention was, and still is, how these problems can be alleviated.³³ Proponents of the reorganization argued that a cabinet-level secretary would give education greater prestige, and ultimately a larger budget.³⁴ In their view, the inclusion of education within HEW resulted in excessive cuts because education represented an abnormally large proportion of the department's "controllable" expenditures:

The allocation of resources that occurs within a department where uncontrollable increases amount to \$15 to \$20 billion annually is unfavorable to a fair consideration of the education budget, most of which is controllable and therefore bears the brunt of downward budgetary pressures.³⁵

In addition, many argued that an education department represented a more rational approach to the administration of federal education programs. Because education and related

programs were scattered across a number of different federal agencies and departments, coordination was difficult to achieve. Moreover, they argued, the organization of education programs within HEW was inefficient. Most authority for administering federal education programs was vested in the Office of the Commissioner of Education, which was organizationally subordinate to the feeble post of Assistant Secretary for Education in HEW.

On the other hand, some opponents of the proposal within the education community argued that what strength education did have rested on its coalition with labor and civil rights groups. They feared that if education was removed from HEW that coalition would suffer, leaving education in a weaker position. While admitting to the lack of coordination among federal education programs scattered throughout the more than 40 federal agencies, the coalition against the department believed there were less drastic ways to achieve coordination and reduce duplication, such as enhancing the authority of the already existing coordinative mechanism, the Federal Interagency Committee on Education. Finally, they argued that rather than increasing the budget for education, passage of a new department would substitute for increased funding of education programs.

Vigorous opposition to the department also came from various constituencies of programs slated for inclusion. Veterans opposed the inclusion of the large Veterans Administration student assistance program in the department; civil rights groups opposed placing Head Start and civil rights enforcement personnel in the department; Indian groups opposed the addition of Indian education programs; many science and higher education representatives opposed the addition of NSF programs; and nutritional groups opposed the inclusion of child nutrition programs. All feared the disruption of traditional relationships in a new organizational environment and the subjection of their priorities to those of the new department.³⁶

Within the Carter Administration, support was uneven. For instance, Joseph A. Califano, then Secretary of HEW, was adamant in his opposition to the plan and argued that it would eliminate any possibility of coordinating edu-

cation programs with those in health and welfare. Several of the agencies with programs that might have been moved to the new department, such as the National Science Foundation, also voiced their opposition to the proposal. On the other hand, many top education officials, the Office of Management and Budget (OMB), and the White House Staff favored it. Given the lack of unanimity in the Executive Branch, without President Carter's active support it is likely that the proposal would have failed as did the 130 previous Congressional proposals for a separate department.

In Congress, the proposal gained more favor in the Senate than the House. A bill that would have included many of the disputed programs was pushed by Sen. Abraham Ribicoff (D-CT) in 1978. Although several of these programs, including child nutrition and Indian education, were dropped from the bill in floor consideration, the legislation passed the Senate. However, it died in the House due to insufficient time at the close of the session.³⁷

By the time the legislation was reintroduced in spring 1979, the opposing sides had readied themselves for a long and intense battle. A scaled-down version of the bill again was passed in the Senate, as the fight in the House intensified. House opponents argued vociferously that a new department would not improve administrative problems, especially since the bill now excluded most of the programs outside of HEW. Conservatives maintained that its creation would result in increased federal regulation and control of education, despite the supposed safeguards in the bill. According to one report, "Opponents are primarily concerned that creation of the department would result in complete federal elimination of traditionally independent local schools."³⁸ The Carter Administration, laying aside intangible issues like visibility and prestige, focused its arguments on the management question. OMB Director James T. McIntyre, Jr., forcefully argued before Congress that establishment of a separate department would allow increased savings in administrative costs, reductions in personnel, and the elimination of several layers in the bureaucracy. Even then, the bill cleared the House Government Operations Committee by a single vote, and on the House floor, opponents tacked

on a series of controversial amendments permitting prayers in the schools, banning busing, and prohibiting affirmative-action quotas in a last-ditch effort to prevent passage. Amid great uncertainty among interested parties, the bill finally passed the full House by a margin of only four votes. Following more procedural delays, final legislation was approved in Conference where the controversial House amendments were quietly dropped.³⁹

As finally passed, the new Education Department (ED) consists of the programs formerly housed in the education division of HEW as well as HEW's Rehabilitation Services Office, and the education and vocational rehabilitation responsibilities of HEW's Office of Civil Rights. In addition, the Defense Department's overseas dependent schools, several science education programs from the National Science Foundation, and the college housing loans programs from the Housing and Urban Development Department were transferred to ED. Absent from the new department are the Head Start program, veterans education, Indian education, child nutrition programs, and the major education programs of the Labor Department.

Early signals indicate that the struggle to implement the new department will prove as difficult as its passage. Secretary Shirley M. Hufstедler must attempt to reconstruct the fragile coalition of interests that was ripped apart in the bitter enactment battle. According to one commentator, "months of heated lobbying on the measure split some longtime allies and united some traditional enemies."⁴⁰ Many of these groups and much of the education bureaucracy are already alienated because Hufstедler chose a top management team made up of many noneducators and also failed to solicit as much input from the lobbyists and bureaucrats as they would have liked.⁴¹ Additionally, after only a few months on the job, she invoked the wrath of several key members of Congress by ignoring their disapproval of regulations for four education programs. In a strongly worded letter urging the Secretary to reconsider, Rep. Carl Perkins (D-KY) stated that, "We can think of no more arrogant course of action for the Administration to take. We can also think of no more irresponsible action which you and your department can take."⁴² Moreover, President Ronald Reagan promised

during his election campaign to work for the elimination of ED should he be elected. If these early signs are a clue to the future, the department may find itself in a difficult political position in an environment increasingly hostile to social programs in general and education programs in particular.

TUITION TAX CREDITS

In 1978, Congress came close to approving a program of federal tuition tax credits that would have applied to both postsecondary and elementary and secondary education. The proposal, if approved, would have provided a credit against the federal income tax for every full-time student enrolled in any eligible educational institution. Bills to provide tuition tax relief to college students and their parents had passed the Senate three times before, but each time they were blocked in the House Ways and Means Committee.⁴³ What was new in 1978 was the extension of the bill's benefits to parents of elementary and secondary students. If passed, the legislation would have represented a major new federal financial commitment to education. Supporters are expected to continue their struggle in the 1980s. Because an elementary and secondary education credit would provide an incentive for more parents to send their children to private schools, the tax credit has tremendous implications for the balance between public and private education.

In 1978, a Congressional election year dominated by "Proposition 13 tax-cutting fever," support for tuition tax credits grew among House members. A bill extending benefits to both private school students and postsecondary students was passed by the House in June of that year. The bill would have allowed families of private school students to deduct a maximum of \$50 of their tuition costs from their federal income tax, with the limit rising to \$100 by 1979. College credits were once again passed by the Senate, but a major lobbying effort by the Carter Administration and by the public school lobby blocked the elementary and secondary school proposal in that chamber. A conference committee compromise failed when the House voted down the legislation because it lacked the elementary and secondary credits. With any form of tax credit

facing a Carter veto, an Administration-backed expansion of college student grants and loans to include middle class families was passed in the waning moments of the 95th Congress.⁴⁴

Supporters of the tuition tax credits included both Republicans and Democrats, the latter being largely parochial school proponents.⁴⁵ Catholic educators, faced with declining parochial school enrollments, lobbied vigorously for the measure, arguing that the very existence of their parochial school system was at stake. They argued that tax credits would promote educational diversity and competition by halting the steady decline in the number of private schools. Additionally, the credits have tremendous political appeal since they would provide much needed tax relief to the middle class. However, according to its defenders, the credit would not work to the advantage of only the middle class, because it would allow many more minority group members to attend non-government schools. Finally, by not requiring new bureaucracies or paperwork, it was argued, tax credits would not contribute to governmental growth. As Sen. Packwood (R-OR), a chief sponsor of the legislation, wrote:

Stripped of the veneer, the sole issue is a question of philosophy: Should we leave the choice [of educational assistance] to the individual, given the simple incentive on the income tax or should we leave the decision to bureaucrats with the maze of regulations and forms that come with direct government grants?⁴⁶

Opponents of the tax credit include many liberal Democrats as well as many members of Congress who oppose parochial school aid. In the past, some fiscal conservatives have also opposed the tax credit concept as an enlargement of federal involvement in education. Public school supporters working through the National Coalition to Save Public Education, a coalition of some 40 elementary and secondary, labor, civil rights, and other organizations, mounted a late-starting but massive lobbying effort during the 1978 legislative struggle. They argued that tuition credits would undermine the public schools by subsidizing middle class and white flight from the schools, while adding

to the number of substandard private schools, especially those established to avoid integration. Moreover, they argued, that like nearly all tax credits the benefits would accrue to the middle and upper classes, rather than the needy, and therefore would represent a dramatic shift in federal school aid away from equalizing opportunity and toward general assistance. Another concern was the cost of the measure, which the Congressional Budget Office estimated would reach \$1.797 billion in three years. Opponents disputed claims that the credit would not increase bureaucracy and paperwork, pointing to the need for certification of private school students qualifying for the credit. Finally, opponents of the measure argued that it constituted a violation of the Constitutional separation of church and state, an issue on which the Supreme Court has yet to rule definitively. Sen. Ernest F. Hollings (D-SC) summed up the arguments of the opponents this way:

Careful study convinced me that that proposal would turn our nation's education policy on its head, benefit a few at the expense of many, proliferate substandard segregation academies, add a sea of red ink to the federal deficit, violate the clear meaning of the

First Amendment of the Constitution, and destroy the diversity and genius of our system of public education.⁴⁷

On the advice of HEW, Treasury, and OMB officials, President Carter opposed the enactment of tax credits at any level of education. His threatened veto was an important obstacle to passage.

Despite the 1978 failure of the bill, support for tuition tax credits and other forms of private educational assistance is still alive. Sen. Daniel P. Moynihan (D-NY) attempted in 1980 to attach an amendment to the "Higher Education Reauthorization Bill" that would have extended eligibility for the Basic Educational Opportunity Grants to students in private elementary and secondary schools. The Senate, however, rejected the amendment by a solid margin despite Moynihan's argument that his proposal differed from the 1978 bill by focusing benefits on families with incomes of less than \$20,000.

In the 1980s, the issue of tuition tax credits is likely to remain on the agenda, especially if disenchantment with the public schools and with increased taxes continues to grow. What form the debate will take is unclear, but it is certain to remain highly charged.

FOOTNOTES

¹See, for instance: National Institute of Education, *Compensatory Education Study: A Final Report from the National Institute of Education*, Washington, DC, U.S. Government Printing Office, 1978; James J. Vanecko and Nancy L. Ames, *Who Benefits from Federal Education Dollars?*, Cambridge, MA, Abt Books, no date; Burnes, op. cit.; and Robert Goettel, "Federal Assistance to National Target Groups: The ESEA Title I Experience," in Michael Timpane, ed., *The Federal Interest in Financing Schooling*, Cambridge, MA, Ballinger, 1979, pp. 173-208.

²Albert L. Alford, "The Education Amendments of 1978," *American Education*, 15, March 1979, pp. 6-14. See also David G. Savage, *Education Laws of 1978*, Arlington, VA, National School Public Relations Association, 1978.

³Joseph Cronin, "The Federal Takeover: Should the Junior Partner Run the Firm?," in Samuel Halperin, ed., *Federalism at the Crossroads: Improving Educational Policy-making*, Washington, DC, Institute for Educational Leadership, 1976, pp. 2-3.

⁴*New York Times*, January 30, 1978, p. 1.

⁵House Committee on Education and Labor, *Excerpt of a Report on the Educational Amendments of 1978*, 95th Cong., 2nd Sess. (1978), p. 134.

⁶P.L. 92-318.

⁷P.L. 93-380, as amended by P.L. 93-568.

⁸P.L. 93-112.

⁹P.L. 94-142.

¹⁰*New York Times*, February 15, 1978, p. A-31.

¹¹Cronin, op. cit., p. 4.

¹²Samuel Halperin, "Federal Takeover, State Default, Or a Family Problem?," in Halperin, ed., op. cit., p. 19.

¹³For a more extended discussion of Title IX, see Volume VI of this report, *The Evolution of a Problematic Partnership: The Feds and Higher Ed*.

¹⁴U.S. House of Representatives, *Hearings Before the House Special Subcommittee on Education, Committee on Education and Labor, Discrimination Against Women*, 91st Cong., 2nd Sess. (1970).

¹⁵Edith K. Mosher, Anne H. Hastings, Jennings L. Wagoner, Jr., *Pursuing Equal Educational Opportunity: School Politics and the New Activists*, New York, NY, ERIC Clearinghouse on Urban Education, 1979, p. 21.

¹⁶Andrew Fishel and Janice Pottker, *National Politics and Sex Discrimination in Education*, Lexington, MA, D.C. Heath and Co., 1977, p. 101.

¹⁷*Ibid.*, p. 103.

¹⁸Russell Sage Foundation, *Guidelines for the Collection, Maintenance, and Dissemination of Pupil Records*, Report of a Conference on the Ethical and Legal Aspects of School Record Keeping, June 12-14, 1972; National Committee for Citizens in Education, *Children, Parents, and*

School Records, 1974.

- ¹⁹From "Personal Privacy in an Information Society: The Report of the Privacy Protection Study Commission," reprinted in U.S. House of Representatives, *Hearings Before the Subcommittee on Elementary, Secondary, and Vocational Education of the Committee on Education and Labor on H.R. 15, Part 9: Family Educational Rights and Privacy Act of 1974*, 95th Cong., 1st Sess. (1977), pp. 130-131.
- ²⁰Advisory Commission on Intergovernmental Relations, *Categorical Grants: Their Role and Design*, Report A-52, Washington, DC, U.S. Government Printing Office, 1978, p. 237.
- ²¹*Congressional Quarterly Almanac*, 1975, Washington, DC, Congressional Quarterly Service, 1976, p. 651.
- ²²See above section entitled "Other Equal Protection Issues."
- ²³JoAnn Englehardt, "The Education of All Handicapped Children Act: Opening the Schoolhouse Door," *New York University Review of Law and Social Change*, 6, Winter 1976, p. 46.
- ²⁴*Congressional Quarterly Almanac*, 1975, *op. cit.*, p. 653.
- ²⁵*Ibid.*
- ²⁶Fishel and Pottker, *op. cit.*, pp. 107, 115.
- ²⁷Rochelle Stanfield, "Bringing the World to the Disabled—The Feds Start to Get Tough," *National Journal*, Washington, DC, February 18, 1978, p. 273.
- ²⁸A recent education block grant amendment offered by Rep. John Ashbrook (R-OH) failed in the House by a vote of 79-290. Notably, however, such proposals would not have much effect on across-the-board regulations.
- ²⁹U.S. House of Representatives, *Hearings before the Subcommittee on Elementary, Secondary, and Vocational Education of the Committee on Education and Labor on H.R. 15, Part 2: Paperwork Problems in Elementary and Secondary Education*, 95th Cong., 1st Sess. (1977).
- ³⁰Committee on Education and Labor, *op. cit.*, p. 135.
- ³¹Alford, *op. cit.*, p. 11 and Savage, *op. cit.*, p. 112.
- ³²Together with the NEA, the American Association of School Administrators, the Council of Chief State School Officers, the National Association of State Boards of Education, the National Congress of Parents and Teachers, and the National School Boards Association are known as the "Big Six."
- ³³See Rochelle Stanfield, "There's a Lesson to be Learned Over a Department of Education," *National Journal*, Washington, DC, July 23, 1977, pp. 1149-1153.
- ³⁴Harrison Donnelly, "Separate Education Department Proposed," *Congressional Quarterly Weekly Reports*, April 22, 1978, p. 990.
- ³⁵Rufus Miles, Jr., quoted in *Congressional Record* (daily edition), Washington, DC, February 28, 1978, p. 52564.
- ³⁶Bill Peterson, "Education Fight: 'Turf' Politics of Reorganization," *Washington Post*, January 17, 1978, p. A-2.
- ³⁷Harrison Donnelly, "Education Department Opponents Force Bill Off House Schedule," *Congressional Quarterly Weekly Reports*, Washington, DC, October 7, 1978, p. 2752.
- ³⁸*Ibid.*
- ³⁹See Rochelle Stanfield, "Getting the E Out of HEW—The Trauma Has Only Just Begun," *National Journal*, Washington, DC, October 6, 1979, pp. 1649-1651; Rochelle Stanfield, "They've Taken the E Out of HEW—But Its New Home Isn't Ready Yet," *National Journal*, Washington, DC, March 1, 1980, pp. 352-356; and Harrison Donnelly, "Education Department Wins Final Approval," *Congressional Quarterly Weekly Reports*, Washington, DC, September 29, 1979, p. 2112.
- ⁴⁰Stanfield, "Getting the E Out of HEW," *op. cit.*, p. 1649.
- ⁴¹See Christopher Connell, "Hufstедler at the Wheel," *Change*, 12, April 1980, pp. 40-41, and Samuel Halperin, "The Department of Education: Last but Not Least," *Change*, 11, November-December 1979, pp. 35-37.
- ⁴²The complete letter is reprinted in *Education Times*, June 16, 1980, p. 1.
- ⁴³See Congressional Quarterly, *Congress and the Nation*, Volume II, *op. cit.*, p. 72.
- ⁴⁴See "Tuition Tax Credit Fails Under Veto Threat," *Congressional Quarterly Almanac*, 1978, Washington, DC, Congressional Quarterly Service, 1979, pp. 245-256.
- ⁴⁵Rochelle Stanfield, "Education Report: The Taxpayers Revolt, Education Aid for Everybody?" *National Journal*, Washington, DC, April 1, 1978, pp. 509-514. Senator Robert Packwood, "The Accessible Dream: Financing Educational Needs," *Commonsense*, 1, Summer 1978, pp. 39-62.
- ⁴⁶Bob Packwood, "Tuition Tax Credits: A Philosophical Question," letter to the *Washington Post*, April 27, 1978.
- ⁴⁷Ernest F. Hollings, "The Case Against Tuition Tax Credits," *Phi Delta Kappan*, 60, December 1978, p. 277. For a fuller treatment of the pros and cons of tuition tax credits, see also: Daniel Patrick Moynihan, "The Case for Tuition Tax Credits," *Phi Delta Kappan*, 60, December 1978, pp. 274-276; Rochelle Stanfield, "The Taxpayers' Revolt, Part II—Education Aid for Everybody?" *National Journal*, Washington, DC, April 1, 1978, pp. 509-514; Rochelle Stanfield, "Political Maneuvering Over Tuition Tax Credits," *National Journal*, Washington, DC, July 22, 1978, pp. 1157-1159; Albert Shanker, "Tuition Tax Bill Must Be Defeated" (weekly advertisement of the AFT), *New York Times*, March 5, 1978; David W. Breneman and Susan C. Nelson, "Education and Training," in Joseph A. Pechman, ed., *Setting National Priorities: Agenda for the 1980s*, Washington, DC, Brookings Institution, 1980, pp. 217-220.

The Political Dynamics Of Federal Involvement In Elementary And Secondary Education

POLITICAL ACTORS AND THE POLICY PROCESS

The federal role in education involves several different categories of public policy—federal grants-in-aid, federal regulation, and federal judicial decisionmaking. These categories are analytically distinct and, more importantly, have involved quite different patterns of policymaking.

Federal Aid, The Developmental Phase

Policymaking in the federal aid area developed in three different stages. The first stage, lasting from 1870 to around 1960, might be termed the Congressional phase because the focus of policymaking during this period was the Legislative Branch. Traditional features of Congressional decisionmaking were prominent during this time—interest articulation, group struggle, the slow and precarious process of coalition building. In most instances, political party and Presidential leadership were not characteristic features in this phase.

The earliest proposals, like the Hoar and Blair Bills, were Congressional initiatives. Teacher and school official organizations were important supporters. In subsequent legislation, whether Congressionally or group initiated, the relationship between Congress and

interest groups remained very close. This was true not only of education groups but also of religious, racial, economic, and other groups as well. Discussion and analysis of interest group positions on aid to education characterize major studies of federal aid in this period, including those by Lee, Tiedt, and Munger and Fenno. While many interest groups appear to have had only marginal influence on federal aid decisionmaking (the Daughters of the American Revolution and the American Legion, for example), the importance of other groups at various stages of legislative activity has been documented in this study. The NEA and other school official organizations, along with the Catholic Church, have been influential throughout the long controversy over federal aid. The NAACP in the 1940s and 50s, the National Council of Churches in the 1940s and 60s, the U.S. Chamber of Commerce up to the 1950s, the AFL-CIO from the 1940s to the 60s, along with others, have all played major roles. The importance of interest groups in the Congressional phase, whether as independent factors or as indicators of Congressional sentiment, was summarized by Eidenberg and Morey's observation that:

The actions Congress would be likely to take [in federal aid to education] were closely tied to what these groups would accept or reject in any proposed bill.¹

On the other hand, neither political party nor Presidential leadership played essential roles in federal aid policy during most of this period. Endorsement of early legislation by Presidents Grant and Hayes was clearly secondary to Congressional and group efforts in the 1870s and 80s. Later legislation was opposed by President Roosevelt and given only "lukewarm" support by President Eisenhower.² Aid to education was given more support by President Truman, but, again, the major initiative came from Congress.

Similarly, political party played a secondary role in the Congressional phase. Party was a factor in the Reconstruction Era, as the leadership for federal aid came from Republicans in Congress. Yet, the issue often went unmentioned in the party platforms, and the success

of federal aid in the Senate required Democratic support from southern members. Bipartisanship characterized Congressional consideration of federal aid in the 1940s. While the locus of federal aid initiative had shifted to the Democratic Party following the New Deal, Republican support from leaders such as Sen. Robert Taft was central to the legislative effort. Munger and Fenno detected a growing partisanship on federal aid developing in Congress in the 1950s, but considerable Republican support for federal construction aid existed throughout the decade.³

In many cases, Congressional responsiveness to interest group positions on aid to education can be traced to constituency interests. The most divisive issues of federal aid—race, religion, federal control—reflected deep social cleavages that were represented in Congress. Thus, many southerners feared that federal aid would upset that region's system of educational segregation. Similarly, positions on aid to parochial schools often mirrored the religious makeup of Congressional districts. Strong Senate support for federal aid, vis-à-vis the House, has been attributed to the religious diversity of Senate districts, permitting Senators more flexibility on the issue.⁴

The constituency role is suggested by public opinion polls as well. Public support for the general concept of aid to education was consistently indicated in opinion polls of the 1940s and 1950s. Only once in that time did support for general aid fall below 65% (see *Table 10*). Behind this general level of approval, however, were popular divisions similar to those which characterized Congress on the question of federal aid. *Table 11* shows that the public had been deeply divided over the question of federal aid to parochial schools for decades. Moreover, the apparent majority favoring federal aid in 1961 could be divided into several factional groups when the additional issues of aid to parochial and segregated schools were introduced (see *Table 12*).

Although public opinion exhibited many of the same divisions over federal aid that were present in Congress, it would be inaccurate to exaggerate the role played by public opinion in the passage of federal aid.

Aside from the NDEA, a surge of public support was not associated with the enactment of

Table 10

**NATIONAL PUBLIC OPINION SURVEYS
CONCERNING GENERAL FEDERAL AID
TO EDUCATION, 1943-61**

Date	Percent in Favor of Federal Aid	Percent Opposed to Federal Aid	Percent with No Opinion
1943	72%	18%	10%
May, 1948	77	13	10
Dec., 1948	62	23	15
1949	66	24	10
1950	66	24	10
1955	68	24	8
Jan., 1957	76	19	5
1959	77	16	7
1961	73	20	7

SOURCE: Philip Meranto, *The Politics of Federal Aid to Education in 1965*, Syracuse, NY, Syracuse University Press, 1967, p. 43.

education programs. For reasons that are unclear, public support for fiscal aid fell to historic lows of 40% and 49% in 1964 and 1965 when the ESEA was passed.⁵ Despite this decline in the opinion polls, popular support subsequently rocketed to an all time high of 90% approval in 1966 when respondents were asked to appraise the passage of aid to education. Thus, it would appear that public opinion

Table 11

**NATIONAL PUBLIC OPINION SURVEYS
CONCERNING FEDERAL AID TO
PAROCHIAL SCHOOLS, 1938-64**

Date	Percent Opposed to Parochial School Aid	Percent in Favor of Parochial School Aid	Percent with No Opinion
1938	53%	35%	12%
1949	51	41	8
1961	57	36	7
1963	41	51	8
1964	51	40	9

SOURCE: Philip Meranto, *The Politics of Federal Aid to Education in 1965*, Syracuse, NY, Syracuse University Press, 1967, p. 46.

Table 12

**PROPORTION OF FEDERAL AID
SUPPORTERS FAVORING VARIOUS
PROGRAMS, 1961**

Program	Percent Favoring
All Public Schools	44.7%
All Public and Private Schools	29.6
Non-Segregated Public Schools	17.5
Non-Segregated Public and Private Schools	8.2
N = 2772	100.0

SOURCE: Adapted from Philip Meranto, *The Politics of Federal Aid to Education in 1965*, Syracuse, NY, Syracuse University Press, 1967, p. 46.

on this issue was relatively soft—that people were willing to follow opinion leaders in the Congress or in interest groups on the question of federal aid to education.

Multiple divisions made coalition-building in federal aid extremely difficult. This was all the more so because the issues of race, religion, and federal involvement were volatile and inherently difficult to compromise. They focused on questions of absolutes rather than on matters of degree: either federal aid to parochial schools or not, either aid to segregated schools or not, etc. Many different techniques of interest aggregation were attempted in order to overcome these difficulties. Those elements of federal aid that were subject to compromise were altered in search of additional support. The size, scope, nature, and formula of federal aid were all changed in various proportions in order to attract votes. As Munger and Fenno write:

The principal strategic problem [in federal aid] . . . has been . . . to maximize support for federal aid by minimizing the conflicts among its supporters. . . . [A] strategy recurrently employed has been to seek to disarm the opposition by the modesty of the sum sought. . . . [S]ome proponents of federal aid have at times abandoned the limited approach and instead asked for sums and programs far

larger than they expect to get... A somewhat different strategy was... a variant of the ancient legislative device known as logrolling... [Finally, some] sponsors [have] tried to pursue the strategy of subtraction, dropping off controversial features... to minimize opposition.⁶

Likewise, different program rationales were developed over the years to address the most significant problem or crisis of the day, from conditions of mass illiteracy in the 1880s to the school construction crisis of the 1950s. By 1960, the strategy which had resulted in the most success was one of categorical accumulation. Programs which could be reduced to relatively noncontroversial fragments might be passed to address specific needs. Thus, the federal role in education at the close of the Congressional phase consisted of separate programs for vocational education, impact aid, "defense"-oriented foreign language and scientific training, and school lunch and milk.

Federal Aid, The Enactment Phase

The second phase of federal aid policymaking might be termed the enactment phase and lasted from 1961 to 1965. The political dynamics involved in the enactment of ESEA differed sharply from the Congressional phase of policymaking. Presidential leadership became the most important single factor in federal aid decisionmaking, while party, electoral, and bureaucratic influence grew as well. Interest groups and Congress, on the other hand, increasingly deferred in this period to Presidential leadership in aid to education policy.⁷

These changes began with the election of President Kennedy in 1960. Aid to education had been an issue in the Presidential campaign, so that, given the closeness of the race, the issue could be said to have contributed to Kennedy's election.⁸ Once in office, the Kennedy Administration's proposal for federal aid established the agenda for consideration in Congress. This association with the President's program reinforced the increasingly partisan character that aid to education had assumed in 1960.

Congressional consideration of federal aid became markedly more partisan as the decade continued. Munger and Fenno perceived this developing through the 1950s, and it emerged clearly in the early 60s.⁹ Indeed, given the division between the parties over questions of federal growth and spending, the aid to education issue appeared to be a natural partisan question.

Although Congress and interest groups were assuming increasingly passive roles in education policymaking—reacting to Presidential initiatives rather than vice versa—their continuing veto power remained substantial. From 1960 to 1964, most major education assistance proposals were blocked in Congress. The 1964 election, which produced a large Democratic majority in Congress and an apparent public endorsement of federal governmental activism, affected this interest group-Congressional role in two ways. First, it narrowed their obstructionist capacity. Correspondingly, it enhanced the Administration's bargaining position. The Johnson Administration engineered a settlement between major interest groups in 1965, producing legislation to which Congressional leaders almost totally deferred. The deferential role of Congress was symbolized in Senate passage of an ESEA bill identical to that passed by the House.

The Administration's brokerage role in ESEA permitted major Executive Branch influence over policy form and content. Federal aid policy was constrained but not determined by group and Congressional positions. Instead, ESEA grew out of the Johnson Administration's decision to pursue aid to education within the context of the Great Society's anti-poverty program. The stress on educational reform and innovation reflected Executive Branch priorities—among HEW political appointees, White House personnel, and the Gardner Task Force.

Federal Aid, The Implementation Phase

Education policy in the implementation phase reflected the legacy of federal aid politics, particularly through the compromises and ambiguities contained within the legislation itself. The stage was marked by renewed Congressional influence over education policy,

partly attributable to the institutionalization of federal aid policy and partly reflecting its increased salience and importance. Conflict between Congress and the Executive Branch became common in both the Johnson and Nixon years, involving both Administrations and the bureaucracy. Finally, the period was marked by the extension of the federal aid rationale to other classes of educationally disadvantaged students, and the subsequent proliferation and fragmentation of interest groups, responding to the growth of new programs.

The dual elements of compromise and reform contained within ESEA shaped, in turn, the politics of implementation. Latent conflicts and ambiguities in the legislation were exposed at this time. The degree and character of desegregation enforcement were established, the extent and techniques of federal accountability and control were developed, the actual distribution of funds was demonstrated, the administrative complexity of the act was exposed, and so on. In addition, the extent of ESEA's reform orientation became clear to local officials, many of whom had expected general aid to education. The Office of Education was required by law to address sensitive issues concerning educational change and innovation, program evaluation, increased educational planning and coordination, and the concentration of federal funds on a prescribed beneficiary group. All of this, in turn, required major increases in federal regulation and paperwork.

On the whole, OE did not enforce these objectives arrogantly or without basis in law. Indeed, many observers believe that the law's requirements were too little enforced. The net result, however, was a great deal of dissatisfaction and conflict. This was reflected in Congress, which began to reassert its influence over educational policy. Under the Johnson Administration, major Congressional assaults, which almost ended in a total transformation of the program, were launched against the act. Congressional amendments of ESEA affected racial guidelines, elements of federal control, the distribution of funds, and other constituency complaints.

The Nixon Administration joined Congressional critics of ESEA and sought further changes. Opposing these changes were the

increasingly institutionalized supporters of federal aid. In Congress, this included a stable group of education specialists on the subcommittees who enjoyed growing seniority and expert staff assistance.¹⁰ These members used their position within the Congressional structure to obstruct and modify further alterations in the program.

Congressional liberals were largely responsible for developing additional education programs in this period. Several new categories of federal aid were added to address the needs of other groups of educationally disadvantaged students. Notable among these were programs for bilingual education and education of the handicapped. Also included among Congressional initiatives were a plethora of very small, special-purpose programs like ethnic studies and environmental education. This latter illustrates the process of policy entrepreneurship which gave rise to such programs:

[Representative John] Brademas [D-IN] felt very strongly that Congress can and should play a significant role as initiator and creator of public policy. . . . [T]he Environmental Education Act was his baby; he authored it, he felt responsible for it. . . . [T]he environmental response was becoming a burning and timely political issue in late 1969. . . . This bill gave Brademas a perfect opportunity to move into the environmental area, and such opportunities would be limited for members of the Education Committee.¹¹

In the formulation of some of these new programs, special interest groups figured prominently. For instance, the handicapped lobby, made up of well organized and highly sophisticated groups of parents of handicapped children in collaboration with special education professionals was astonishingly effective in securing Congressional passage of the *Education for All Handicapped Children Act*. The success of the lobbying effort is apparent in the provisions of the act that precisely define instructional style, the rights of parents and children, and state and local responsibilities.

Other education programs were formulated with relatively little interest group input, but

once the programs were in place groups tended to grow up around them. Such groups have since lobbied vigorously for program expansion. Their success indicates that they too have all acquired a large degree of sophistication in political maneuvering during the past decade.

The groups have been less successful, however, at presenting united organizational positions, as was evident during the campaign to create a new department. In fact, the factions sometimes "appear willing to exhaust themselves in battle with each other at the cost of losing the larger war."¹² Noel Epstein says that the groups have become "rivals for injustice."¹³ The old public education lobby made up of parents, teachers, administrators, and board members that once dominated the education arena at all levels of government has itself fragmented and must now compete for attention with these newer special interest groups.

FEDERAL REGULATORY POLICY

Policymaking in the regulatory arena has had a distinct character of its own. As in the implementation of ESEA, there has been a complex interplay between the enforcement bureaucracy, the President, and Congress once the process of administration and feedback has begun. However, with the exception of regulations designed to implement specific federal programs (examined here), regulatory policy has been a uniquely Congressional innovation. It has frequently depended upon symbolic politics for passage and, thus, has been marked by superficial Congressional consideration.

Within Congress, federal regulatory policy has frequently been developed outside of the education subcommittees of the House and Senate. Rather, regulations have often been produced by other legislative committees or even adopted directly on the floor (see *Table 13*). Indeed, several regulations were, to a considerable extent, initiated by only one member of Congress; the *Buckley Amendment* and *Title IX* could be placed in this category.

Interest groups have assumed differing roles in regulatory programs. Some regulations, like *Title IX*, have benefited from group support. Others have been enacted with little reference to interest groups. In most cases, however, the major factor in gaining Congressional support seems to have been issue symbolism. That is, regulatory provisions themselves tend to be very brief and generalized statements of broad goals. Congressional consideration often consists of symbolically approving these worthy goals rather than carefully examining the ramifications of regulatory impact. As long as the goals themselves are at issue, rather than the more complicated question of which techniques are most appropriate to address them, Congressional treatment can be extremely simplified.

This process of Congressional approval of regulatory policy substantively affects implementation. The implementing agency bears responsibility for giving the vague and generalized legislation enforceable meaning. Considerable flexibility is thus granted to an individual agency which often lacks the capacity and responsibility for satisfying the broad range of interests affected by the regulation. Having produced an operational version of the regulation, the implementing agency may subsequently encounter Congressional resistance and dissent, since actual Congressional intent was never clearly established.

THE PROCESS OF JUDICIAL POLICYMAKING

Much of the Court involvement in educational policymaking is derived from Constitutional and statutory interpretation. The primary vehicles of judicial involvement have been the First and Fourteenth Amendments, through which Court decisions have altered and rede-

Table 13

CONGRESSIONAL ORIGINS OF FEDERAL REGULATIONS

Regulation	Education Congressional Subcommittee Initiative?	
	Initiative?	Initiative?
FERPA	Yes	No
Title IX	Yes	Yes
Section 504	Yes	No
CRA	No	No
Education of Handicapped	Yes	Yes

SOURCE: ACIR staff compilation.

finer individual liberties and equality in the educational arena. Thus, the Supreme Court has developed the Fourteenth Amendment's requirement of equal protection to ban de jure segregation in the nation's schools. Interpretation of the First Amendment has affected parochial schools and issues of free expression in education.

Several processes have been at work in the expansion of the courts' role in education. First, of course, has been the process of Constitutional interpretation. The Constitution itself is generally vague, requiring that the Court give meaning to such expressions as "equal protection of the laws." New interpretations have expanded the judicial role in education in several ways. Development of the First Amendment guarantees has been part of a 20th Century trend of applying the Bill of Rights to state practices, in contrast to earlier interpretations. In addition, the Court has increased its role of defending the rights of "discrete and insular minorities" that may not be protected in the majoritarian democratic process.¹⁴ Once begun, however, the process of reinterpretation may be difficult to halt. As Archibald Cox writes of the Fourteenth Amendment: "Once loosed, the idea of equality is not easily cabined."¹⁵

Another engine of judicial expansion has been the institutional process of court involvement. This can be clearly seen in the race discrimination cases. Implementation of the *Brown* decision appeared to be a moderate process of "all deliberate speed." Yet, Cox argues that it entailed a new dimension of judicial enforcement.¹⁶ Rather than simply prohibiting a certain practice, it established "affirmative duties" on the part of the defendant—that it must institute specific reforms in order to comply with the law. A lack of compliance could produce increasingly detailed instructions on conformity, urged by the plaintiff. An unexpected degree of judicial involvement in the everyday administration of a school could, thereby, evolve from the process of enforcement.

A third factor increasing educational litigation has been the effect of other governmental programs. To begin with, federal laws such as Title IX and the *Civil Rights Act* have required judicial interpretation. Thus, in enlarging re-

quirements to provide bilingual education, the Supreme Court based its decision upon the *Civil Rights Act*.¹⁷ As Tyll van Geel observes: "The Court's activism has been premised on the need to make sure that government, including the public schools, as it grows and extends its influence, . . . does so in ways that are consistent with the values of liberty and equality."¹⁸ In addition, several federal programs have funded lawyers engaged in educational litigation. The *Civil Rights Act* created a staff of legal enforcement personnel. The *Economic Opportunity Act* established grants for legal assistance services, and other programs have supported such activities as well. Nathan Glazer argues that:

There is another factor which suggests that a highly activist and intrusive judiciary is now . . . permanent: . . . the creation of new and powerful interests, chief among them the public advocacy law centers. . . . Many . . . centers, receiving government or foundation aid, were established in almost every field of social policy.¹⁹

CONSTRAINTS ON FEDERAL INVOLVEMENT IN ELEMENTARY AND SECONDARY EDUCATION

Three general forms of constraints exist on the federal role in education. These consist of political, structural, and budgetary constraints. Each has had important effects at times in limiting or shaping federal involvement in education.

Powerful political constraints have historically shaped federal aid to education. A series of divisive, crosscutting issues hindered passage of aid to education for nearly a century. By itself, race, religion, and federal control each created formidable obstacles to federal aid. Each was a deep and emotional issue, extremely difficult to compromise. Together, however, they formed an exceptionally difficult barrier. Once a major compromise was constructed on the general concept of federal aid, it could still be divided over one of these issues or an additional complicating factor such as program design or the distribution of funds.

Only years of renewed attempts, skilled negotiation and propitious circumstances succeeded in overcoming these obstacles to passage, and they have continued to create difficulties during implementation.

The structure of Congress also presented significant obstacles to the expansion of federal involvement in education. This structure provides numerous veto points for opponents, only one of which is necessary to block action. This feature of Congressional organization allowed minority opponents to frustrate pro-aid majorities.²⁰ The most noteworthy case of this occurred in 1960, when a major program of federal aid actually passed both houses of Congress, only to die for lack of House Rule Committee action permitting a House-Senate conference. Similarly, the Congressional committee system, combined with the seniority system for selecting chairmen, served to place conservative, southern Democratic aid opponents in key positions of authority. Notable examples of such chairmen included Graham Barden (D-NC), Chairman of the House Education and Labor Committee, and Howard Smith (D-VA), Chairman of the House Rules Committee. Both men used their positions to thwart federal aid proposals for years.

Importantly, however, structural features of government can have a "ratchet" effect on governmental growth. Once expansionsary programs have been passed, these features may work to frustrate attempts to reverse the expansions. This was clearly evident in the early 1970s when House liberals on the Education and Labor Committee worked with Senators to obstruct attempts by President Nixon and the full House to limit federal enforcement of civil rights laws in education.

Budgetary constraints have been important in limiting the federal role in education as well. They were a factor in President Eisenhower's opposition to large-scale federal aid in the late 1950s. They served to restrain expected federal expenditure growth in the late 1960s, following passage of ESEA, due to intense competition for funds for the Vietnam War. Most importantly, budgetary constraints were a central obstacle to growth in the federal share of educational finance under the Nixon Administration. Even successful Congressional overrides of several Presidential vetoes managed only

to maintain federal educational expenditures at a fairly constant level.

Interestingly, there is some reason to believe that budgetary constraints have contributed to federal regulation. Some observers believe that Congress, unable to provide scarce federal funds to address certain problems, has attempted to legislate a solution through regulation. As Samuel Halperin argues: "[T]he new fiscal realities . . . mean that Congress provides fewer dollars. Still determined to legislate against problems, Congress uses sticks instead of carrots."²¹ Similarly, David Kirp notes in the case of bilingual and sex discrimination regulations that:

. . . a federal political response was made easier because Congress merely required others to do something rather than funding new programs. The effect of these actions has been to force lower levels of government . . . to reshape their budgets in ways that accommodate new understandings of distributive justice. . . .²²

Another example of this phenomenon is the *Education for All Handicapped Children Act*. Facing Presidential opposition to huge expenditures, Congress passed the law with much smaller authorizations than were originally proposed. Yet, the act still mandated massive changes in local practices towards increasing services to the handicapped. Local officials have since protested the high cost of complying with these regulations. However, confronting a tight budget, past Commissioner of Education Ernest Boyer argues that: "Just because the federal government identified the issue, it doesn't follow that Washington has to provide the funds."²³

CONSTRAINTS ON FEDERAL COURT ACTIVITY

Both political and structural limitations affect the federal judiciary and particularly the Supreme Court. Politically, the courts are constrained by the Constitution and by political feedback. Structurally, the courts are constrained as to how much they can do. They may have exceeded their capacity in recent years, to

the detriment of judicial decisionmaking, but all recognize that their capacity is limited at some point.

Constitutional constraints are ambiguous, to be sure. The expansion of judicial involvement has followed new interpretations of various Constitutional provisions, and it would surely be possible for the Supreme Court to limit its own involvement, or federal involvement generally, through reinterpretation of the Tenth or Fourteenth Amendment. Nevertheless, even massive expansion of the judicial role in certain areas does not obscure the inherent limitations that exist on other questions where the courts have frequently not, in fact, become involved. Many areas simply lack sufficient Constitutional justification for judicial involvement. The Court has not adopted the simple position that "the Constitution is what the Supreme Court says it is." Thus, judicial involvement remains shallow in most aspects of education.²⁴

The courts have also been affected by political feedback. Although reversals of past expansions have been few, there has recently been restraint in further expansions. In certain areas, the political linkage has been a fairly direct response to the political climate. Van Geel argues that this has been the case with busing: "In light of this controversy it is highly unlikely that the Supreme Court will soon extend the *Brown* case to encompass genuine de facto segregation."²⁵ More generally, restraint has come about through the appointment process. President Nixon ran for office in 1968 against the liberal Supreme Court and took great care to appoint conservatives and "strict constructionists" to the bench. Given evidence of judicial restraint since that time, this has surely had an effect.

There also exist structural limitations on judicial activism. This is not to say that the courts may not have taken on too much, especially in resorting to affirmative duties. But, heavy criticism of this tendency appears to have registered an effect. At some point, all recognize that there are limitations on the work load that courts can deal with. They are not administrative or bureaucratic agencies, after all. This was clearly acknowledged by the Supreme Court in *San Antonio v. Rodriguez*, in which the Court argued that it could do no better in

making school finance policy than state and local officials:

Thus we stand on familiar ground when we . . . acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. . . . We are unwilling to assume for ourselves a level of wisdom superior to that of legislators, scholars, and educational authorities in 49 states.²⁶

FORCES AND RATIONALES OF FEDERAL INVOLVEMENT

The most striking aspect of rationales for federal involvement in elementary and secondary education has been their evolution over time. This evolution represents, in part, a natural adaptation to changing problems. It has also represented a conscious attempt to gain support for federal aid through hitching onto major problems or "crises" of the day. This can be clearly seen by listing the major proposals and their prime rationales (see Figure 2).

Because poverty and need ultimately formed the basic justification for ESEA, it is worth following the evolution of this rationale in some of its former manifestations. While need was clearly an important rationale in the beginning, it became so again following the New Deal. Roosevelt reportedly opposed federal aid in the late 1930s because it was not sufficiently targeted.²⁷ Interestingly, Eisenhower's proposals in the late 1950s generally required greater equalization of aid than did Democratic proposals. For a fiscal conservative seeking a narrower justification for federal involvement, this was viewed as a way of restricting federal funds.

When adopted into law in ESEA, equalization was an attractive means of gaining support. It was widely believed to be a legitimate federal function. Yet, instrumentally, the politics of coalition-building limited the extent to which equalization could be written into effect. Many Congressmen placed a higher priority on funding for their own districts than on the need

Figure 2

HISTORICAL SUMMARY OF RATIONALES FOR FEDERAL INVOLVEMENT IN EDUCATION

Historical Period	Rationale
1870s and 1880s	Equalization and default, south unwilling and unable to adequately address massive illiteracy.
1920s	High illiteracy, need additional Americanization equalization.
1930s	Fiscal emergency.
1940s	High illiteracy, high demand for education, low salaries.
1950s	Emergency school construction, equalization.
1960s	Equalization, default, innovation.
1970s	Equalization of access, research, innovation.

SOURCE: ACIR staff compilation.

for a clear rationale, which gave rise to imperfect equalization in the bill. Perhaps disingenuously, at times, Republicans demonstrated in the late 1960s and during the Nixon years that equalization could still be adopted by fiscal conservatives to constrain the scope of federal involvement. A strict adherence to need can constrain federal spending. The phenomenon of fiscal conservative attraction to need formulas can give rise to ideologically strange coalitions on the matter, as when Republicans and southern Democrats supported fights for greater interstate equalization in the Title I formula in the late 1960s. Equally strange coalitions can be elicited over impact aid.

The forces that have contributed to federal involvement in education have been several. At the broadest level, these have included the growth of social and technological complexity. In certain instances, this has affected federal involvement quite directly, as with the acknowledged need to promote scientific and technical education under the NDEA. Primarily, however, its effect on the federal role has been indirect: by promoting the need for education altogether, growing complexity has increased total demand for education, some of which has been directed toward the federal government.

Demands by interest groups and forces external to government have been a primary force for federal involvement in education from the earliest years, particularly before 1960. This has been especially true of the NEA and other educational groups. However, peak

efforts by interest groups to obtain federal aid have often been associated with periods of state and local fiscal "emergency." In other words, local financial conditions have affected willingness to resort to the federal government for assistance. This process was apparent in the effort by southern educators to obtain federal aid in the Reconstruction Era. Similarly, many local educators sought emergency federal assistance during the Great Depression and, again, through the 1950s when education faced severe teacher and classroom shortages. In the 1960s, considerable support for federal aid came from northern urban areas, whose public schools were increasingly hard pressed by immigration of the poor into the cities and by emigration of the middle class.

External demands have been enhanced by governmental actions. In particular, the continuing process of institutionalizing federal involvement in education has reinforced group access and influence. This began as early as 1867 with the creation of a federal agency for education. This bureau worked actively with the NEA in the early struggle for federal aid, and it has provided useful information to aid proponents throughout its history.

By the 1960s, the process of institutionalization had proceeded much further. The Office of Education had grown, of course, and education subcommittees had been established in both chambers of Congress, complete with staff and stable membership. Each additional federal aid program was accompanied by clientele and beneficiary groups committed to its growth and

survival. Orfield argues that this process had proceeded to such lengths by 1969 that fundamental change in the federal role in education had become nearly impossible: "Given the mounting strength of local constituencies that grow up around major grant programs after several years of operation, the President had lost his last real opportunity to fundamentally reshape the basic structure of federal aid."²⁸

By 1960, government itself had become a major (and perhaps preeminent) force in shaping the federal role in education. This occurred in several ways. First, the unintended consequences of some federal governmental actions have contributed directly to growing involvement in education. Thus, federal defense activities in 1940 and again in 1950 spurred the impact aid programs. This process of involvement represents a form of governmental externality.²⁹

More importantly, a growing tendency toward governmental assumption of initiative for

federal growth has been discernable in education. Congressional activists have long been vitally important working with education groups on behalf of federal aid. More recently, the President and bureaucracy assumed leadership positions in educational policy in the 1960s. This resulted less from external demands than from the internal policy agenda of advancing the Great Society. With the election of President Nixon, initiative for federal growth shifted out of the White House, but not out of the federal government. Congressional entrepreneurs and bureaucratic officials have advanced recent federal regulations affecting education. Each has found incentives that make such an activist role attractive. The reversal of Presidential support for federal growth in education demonstrates that governmental activism is not a fully autonomous force for federal involvement. However, the structure of Congress and the federal bureaucracy make such reversals considerably more difficult.

FOOTNOTES

¹Eidenberg and Morey, *op. cit.*, p. 60.

²Munger and Fenno, *op. cit.*, p. 129.

³*Ibid.*, p. 157.

⁴Eidenberg and Morey, *op. cit.*, pp. 147-148.

⁵This was apparently not due to any changes in the phrasing of questions. See Meranto, *op. cit.*, p. 43.

⁶Munger and Fenno, *op. cit.*, pp. 175-176, 178-179.

⁷It would be possible to assert that group and Congressional actors fundamentally shaped aid to education policy through anticipated reactions on the part of the Executive Branch. Regardless, the crucial point is that their role had become a more passive one.

⁸Sundquist, *op. cit.*, p. 468.

⁹Munger and Fenno, *op. cit.*, p. 157.

¹⁰As Stephen K. Bailey writes: "'Congress' to most lobbyists is a half-dozen members and their personal and committee staffs. On the Senate side . . . staff members who concentrate on education matters tend to have enormous influence. Staff experts . . . have come close to being 'Surrogate Senators for Education.' Education's representatives deal, on the Senate side, almost totally with staff. On the House side, real education expertise resides in a handful of key members." *Education Interest Groups in the Nation's Capitol*, Washington, DC, American Council on Education, 1975, pp. 63-64.

¹¹Dennis Brezina and Allan Overmyer, *Congress in Action, The Environmental Education Act*, New York, NY, The

Free Press, 1974, p. 26. Congressional initiation of additional categorical programs has continued to expand. By one estimate, 16 new program authorizations were included in the most recent comprehensive education bill. See Alford, *op. cit.*, p. 9.

¹²Mosher, Hastings, Wagoner, *op. cit.*, p. 21.

¹³Noel Epstein, "25 Years After Brown, A Rivalry for Injustice," *Washington Post*, May 13, 1979, p. C1.

¹⁴*United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938).

¹⁵Quoted in Hogan, *op. cit.*, p. 156.

¹⁶Cox, *op. cit.*, p. 77.

¹⁷*Lau v. Nichols*, 414 U.S. 563 (1974).

¹⁸van Geel, *op. cit.*, p. 17.

¹⁹Glazer, *op. cit.*, p. 119.

²⁰See Robert Bendiner, *Obstacle Course on Capitol Hill*, New York, NY, McGraw Hill, 1964.

²¹Halperin, *op. cit.*, p. 19.

²²Kirp, *op. cit.*, p. 136.

²³Ernest Boyer, quoted in Edward Fiske, "Carter-Congress Clash Involves Philosophic and Political Issues," *New York Times*, February 15, 1978, p. A-31.

²⁴van Geel, *op. cit.*, p. 41.

²⁵*Ibid.*

²⁶*San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), quoted in Shapiro and Hobbs, *op. cit.*, pp. 482-483.

²⁷Munger and Fenno, *op. cit.*, p. 101.

²⁸Orfield, *Congressional Power*, *op. cit.*, p. 135.

²⁹See Samuel Beer, "The Modernization of American Federalism," *Publius*, 3, Fall 1973, pp. 75-76.

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What is ACIR?

The Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. ACIR is a permanent national bipartisan body representing the executive and legislative branches of Federal, state, and local government and the public.

The Commission is composed of 26 members—nine representing the Federal government, 14 representing state and local government, and three representing the public. The President appoints 20—three private citizens and three Federal executive officials directly and four governors, three state legislators, four mayors, and three elected county officials from states nominated by the National Governors' Association, the National Conference of State Legislatures, the National League of Cities/U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Congressmen by the Speaker of the House.

Each Commission member serves a two year term and may be reappointed.

As a continuing body, the Commission approaches its work by addressing itself to specific issues and problems, the resolution of which would produce improved cooperation among the levels of government and more effective functioning of the federal system. In addition to dealing with the all important functional and structural relationships among the various governments, the Commission has also extensively studied critical stresses currently being placed on traditional governmental taxing practices. One of the long range efforts of the Commission has been to seek ways to improve Federal, state, and local governmental taxing practices and policies to achieve equitable allocation of resources, increased efficiency in collection and administration, and reduced compliance burdens upon the taxpayers.

Studies undertaken by the Commission have dealt with subjects as diverse as transportation and as specific as state taxation of out-of-state depositories; as wide ranging as substate regionalism to the more specialized issue of local revenue diversification. In selecting items for the work program, the Commission considers the relative importance and urgency of the problem, its manageability from the point of view of finances and staff available to ACIR and the extent to which the Commission can make a fruitful contribution toward the solution of the problem.

After selecting specific intergovernmental issues for investigation, ACIR follows a multistep procedure that assures review and comment by representatives of all points of view, all affected levels of government, technical experts, and interested groups. The Commission then debates each issue and formulates its policy position. Commission findings and recommendations are published and draft bills and executive orders developed to assist in implementing ACIR policies.