

No. 14-24
AUGUST 2014

WORKING PAPER

READING, WRITING, AND REGULATIONS
A Survey of the Expanding Federal Role in Elementary and
Secondary Education Policy

by Courtney A. Collins



The opinions expressed in this Working Paper are the author's and do not represent official positions of the Mercatus Center or George Mason University.

About the Author

Courtney A. Collins
Assistant Professor
Department of Economics, Rhodes College
collinsc@rhodes.edu

Abstract

Since its inception, the education system in the United States has been structured in a very decentralized way. The federal government has historically played a limited role in public schools, leaving the majority of decisions to be made at the state and local level. The extent of federal involvement began to widen, however, in 1965 with the passage of the Elementary and Secondary Education Act (ESEA). While the original legislation was relatively narrow in purpose, its scope broadened dramatically with subsequent amendments and reauthorizations. This study provides a survey of how federal education legislation and associated regulations have increased across time, highlighting the changes generated by the ESEA and its successors, as well as recent developments in programs like Race to the Top and Common Core. Both the descriptive summary and empirical measurements show strong—and sometimes very rapid—growth of federal influence.

JEL codes: I28, H52

Keywords: education policy, federal education legislation, Elementary and Secondary Education Act, No Child Left Behind, Common Core, Race to the Top

Reading, Writing, and Regulations:

A Survey of the Expanding Federal Role in Elementary and Secondary Education Policy

Courtney A. Collins

1. Introduction

Until 1965, the federal government played a fairly limited role in the elementary and secondary education system in the United States. The US Constitution is noticeably silent on matters related to education, and therefore the provision of education is left as a power reserved to the states under the Tenth Amendment.¹ As part of his Great Society programs, President Lyndon Johnson signed the Elementary and Secondary Education Act (ESEA)² in 1965 and set in motion an expansion of federal control that would continue into the next century.

The original legislation was relatively specific in its intent; it was meant to provide compensatory educational resources for students from low-income backgrounds. However, after numerous amendments and reauthorizations, the law grew to more than 20 times its original size, and the breadth of federal control it provided grew with it. Hundreds of specific federal programs were added over the years as federal funding of elementary and secondary education increased. Attached to these programs and funds came strings of federal control.

The most recent version of the ESEA is No Child Left Behind (NCLB),³ which authorizes such a high level of federal oversight that the original legislation is hardly recognizable.⁴ Even now, federal influence continues to expand, fueled by such recent programs as Race to the Top and Common Core.

¹ See section 2 for additional discussion of the Tenth Amendment.

² Elementary and Secondary Education Act (ESEA) of 1965, Pub. L. No. 89-10, 79 Stat. 27 (1965).

³ No Child Left Behind (NCLB) Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002).

⁴ NCLB technically expired in 2007, but its provisions have remained in effect in the absence of another reauthorization.

The purpose of this study is to provide a survey of how federal education legislation and associated regulations have changed over time and how those changes have affected schools and teachers at the local level. The study begins with the earliest federal legislation and moves to the most recent policies, with a special focus on the ESEA and its growth since 1965. The study also examines the development of the Department of Education, from its roots as a four-person department in the 1860s to its eventual climb to cabinet-level status in 1979. The study is supplemented with several empirical measures of federal growth, including federal education outlays, legislation length, and estimates of the burden imposed by federal regulations, which reflect a sizable expansion in federal involvement in elementary and secondary education over time.

2. Colonial Laws and the Constitution

One of the hallmarks of the American education system, at least in its early years, was its decentralization. There was little formal schooling in colonial America, and in most colonies, education was left a family responsibility. No colony required that schools be established until Massachusetts passed the Old Deluder Satan Act in 1647.⁵ This act was motivated by the fear of “that old deluder, Satan” in his attempts “to keep men from the knowledge of the Scriptures,”⁶ and required that townships of 50 or more households appoint a schoolteacher and that townships of 150 or more households establish a grammar school.

While several colonies passed statutes requiring the creation of schools, such requirements were far from common. However, even without the pressure of a mandate, many

⁵ Neal P. McCluskey, *Feds in the Classroom* (Lanham, MD: Rowman & Littlefield, 2007), 8–10.

⁶ *The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts (1648)*, facsimile edition (Cambridge, MA: Harvard University Press, 1929).

towns, especially in the middle and southern colonies, offered various schooling options. Across the colonies, education ranged from informal, family-centered schooling to more formal schooling in boarding schools, charity schools, and schools set up by local townships.

Even after the colonists declared their independence from Great Britain and began to formalize themselves as a nation with a new system of government, education decisions remained highly decentralized. The Constitution does not make a single reference to education or schooling. The provision of education was left a responsibility of the states under the Tenth Amendment, which declares, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁷

Whether the framers of the Constitution meant to exclude federal involvement in education (and in other general areas not explicitly listed in the Constitution) has been a source of debate since the early 19th century. In an opinion on an 1819 Supreme Court decision,⁸ Chief Justice John Marshall states, “This government is acknowledged by all to be one of enumerated powers. . . . But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, as long as our system shall exist.”⁹ Later in the opinion, he addresses the extent to which the Tenth Amendment restrains federal power, saying,

There is no phrase in the [Constitution] which, like the articles of confederation, excludes incidental or implied powers . . . Even the 10th amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word “expressly,” . . . thus leaving the question, whether the particular power which may become the subject of contest has been delegated to the one government, or prohibited to the other, to depend on a fair construction of the whole instrument.¹⁰

⁷ U.S. Const. amend. X.

⁸ *McCulloch v. Maryland* was a decision relating to the question of whether Congress had the constitutional power to incorporate a bank. See *McCulloch v. Maryland*, 17 U.S. 316, 4 Wheat. 316, 4 L. Ed. 579 (1819).

⁹ *McCulloch*, 17 U.S. at 405.

¹⁰ *McCulloch*, 17 U.S. at 406.

Much of the debate surrounding the Tenth Amendment, both in the years following ratification and by contemporary scholars, surrounds this seemingly inconsequential difference between the Articles of Confederation and the Constitution.¹¹ The analogous sentence in the Articles of Confederation reads, “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation *expressly* delegated to the United States, in Congress assembled.”¹² The Constitution removes the word “expressly,” allowing for implied powers of the federal government. While some historians propose that this omission in the language of the Tenth Amendment renders it meaningless, others contend that it is a powerful assertion of states’ rights, even with the wording change.¹³

Other scholars have noted that federal involvement in education is not necessarily prohibited on constitutional grounds, regardless of how the Tenth Amendment is interpreted.¹⁴ Both the Commerce Clause of the Constitution, which allows Congress to regulate commerce across states, and the Spending Clause, which allows Congress to levy taxes for the purposes of “general welfare,” permit potential federal involvement in education, either directly or indirectly.¹⁵ While scholars have made arguments in favor of federal intervention under these constitutional provisions, the fact remains that American education in its early stages was left almost completely to the states. Despite the high level of current federal involvement, education legislation was minimal during the entire first century following the signing of the Constitution.

¹¹ For a summary of this debate, see Patrick T. Conley and John P. Kaminski, eds., *The Bill of Rights and the States* (Madison, WI: Madison House, 1992), 511; and Mark R. Killenbeck, ed., *The Tenth Amendment and State Sovereignty* (Lanham, MD: Rowman and Littlefield, 2002).

¹² Articles of Confederation of 1781, art. II, emphasis added.

¹³ See Charles A. Lofgren, “The Origins of the Tenth Amendment, History, Sovereignty, and the Problems of Constitutional Intention,” in Ronald Collins, ed., *Constitutional Government in America* (Durham, NC: Carolina Academic Press, 1980); and Raoul Berger, *Federalism: The Founders’ Design* (Norman, OK: University of Oklahoma Press, 1987).

¹⁴ See James E. Ryan, “The Tenth Amendment and Other Paper Tigers: The Legal Boundaries of Education Governance,” in Noel Epstein, ed., *Who’s in Charge Here? The Tangled Web of School Governance Policy* (Washington, DC: Brookings Institution Press, 2004).

¹⁵ *Ibid.*, 45–51.

3. Early Federal Legislation

Most of the early federal education legislation focused on the enhancement of agricultural training, specifically at the collegiate level. In 1862, President Abraham Lincoln signed the Morrill Act, which funded the first land-grant colleges.¹⁶ The legislation had been proposed several years earlier but met strong opposition from western and southern representatives. Although it finally passed by a tight margin of five votes, it was ultimately vetoed by President James Buchanan in 1859. Only after the southern states seceded was the measure reintroduced, passed, and signed. The law allotted each state 30,000 acres of federal land for each of its members of Congress. The land was sold, the proceeds invested, and the funds used to establish colleges that specialized in agriculture or mechanics.¹⁷ The Second Morrill Act of 1890 funded additional colleges, and required that the land-grant schools admit black students or that states without them establish separate black colleges.¹⁸

The Smith-Lever Act, passed in 1914, provided increased federal funding for agricultural education and training. The act created extension centers for land-grant universities established through the Morrill Acts in an effort to disseminate agricultural and farming knowledge and applications throughout local communities.¹⁹

Congress expanded the legislation several years later by providing a more broad-based support of vocational agricultural training with the Smith-Hughes Act of 1917. The Smith-Hughes Act moved beyond general funding of schools at the college level and created specific vocational programs within secondary schools. States were required to match federal

¹⁶ Two other ordinances, the Land Ordinance of 1785 and the Northwest Ordinance of 1787, were passed before the US Constitution was adopted. They stipulated that land within each township should be set aside for a public school. For additional information, see Hollis P. Allen, *The Federal Government and Education* (New York: McGraw-Hill, 1950), 61.

¹⁷ Dennis W. Johnson, *The Laws That Shaped America* (New York: Routledge, 2009), 88–93.

¹⁸ *Ibid.*, 102–3.

¹⁹ *Ibid.*, 103.

appropriations dollar-for-dollar and to use the funds to hire teachers and establish high school curricula that focused on vocational training of agriculture, home economics, and industry.

In addition to providing funds to states, the Smith-Hughes Act also created a Federal Board for Vocational Education to oversee the implementation of the programs, which would be administered by a state-level board in each of the states. The act included provisions relating to the equipment to be used in local schools, qualifications of teachers and directors, and instruction methods. While the legislation itself did not specify instructional plans for schools, it gave the federal board a substantial amount of power and represented the first occasion of federal oversight of local secondary school curricula.²⁰ A report from the National Resources Committee in 1936 suggests that the level of federal control over vocational education grants was rivaled only by the control exercised over funding for the National Guard.²¹

Little federal education legislation materialized in the 1930s and 1940s. One exception was the Lanham Act, enacted in 1940, which was a precursor to later “impact aid” programs designed to compensate local districts that were restricted in the ability to collect property taxes because of large amounts of federal land within their boundaries. The Lanham Act provided federal funds for school districts located in communities that were heavily impacted by the war effort, such as communities housing military bases. Funds were used to construct, maintain, and operate schools.²²

It was not until the late 1950s that a single event would trigger a nationwide interest in education and an accompanying expansion of federal policy. The Russian launch of Sputnik in

²⁰ Allen, *Federal Government*, 72–74.

²¹ National Resources Committee, *Public Works Planning* (Washington, DC: Government Printing Office, 1936), 197–98 (cited in Allen, *Federal Government*, 74.)

²² Allen, *Federal Government*, 104–5; and Christopher T. Cross, *Political Education: National Policy Comes of Age* (New York: Teachers College Press, 2004), 3.

October 1957 incited a national panic regarding America's education system.²³ Politicians began to question recent trends that emphasized nontraditional and technical training courses like cosmetology and home economics, as well as the funding of nonacademic resources such as swimming pools, gymnasiums, and marching bands. Faced with the pressure of Russia's advance in space technology, Americans displayed a renewed interest in academic standards, particularly in math, science, and engineering. A 1958 *Reader's Digest* article summarizes the nation's sense of urgency and fear: "What opened our eyes? A flying box containing a dying dog. We are going to reform American education not because we are eager to produce finer citizens, but because we are scared stiff."²⁴

In reaction, Congress passed the National Defense Education Act (NDEA)²⁵ in 1958, which authorized federal support for programs in math, science, engineering, and foreign languages for secondary schools, as well as for colleges and universities. The law represented a substantial leap forward in the federal role in education policy. It was significant in that it authorized considerable amounts of categorical funding targeting specific content material.²⁶ In a crisis response to the Soviet advance in the space race and in the name of national security, Congress had opened the door for huge advances in federal involvement in local education, despite resistance from several factions of legislators. In his dissenting minority report, Senator Barry Goldwater predicted, "If adopted, the legislation will mark the inception of aid, supervision, and ultimately control of education in this country by federal authorities."²⁷

²³ Phillip Meranto, *The Politics of Federal Aid to Education in 1965* (Syracuse, NY: Syracuse University Press, 1967) 13–14.

²⁴ Clifton Fadiman, "The Mess in Education—Who Is Responsible?" *Reader's Digest*, October 1958, 49–52.

²⁵ National Defense Education Act (NDEA), Pub. L. No. 85-864, 72 Stat. 1580 (1958).

²⁶ Stephen K. Bailey and Edith K. Mosher, *ESEA: The Office of Education Administers a Law* (Syracuse, NY: Syracuse University Press, 1968), 20.

²⁷ Cross, *Political Education*, 12.

Goldwater’s statement would be confirmed in the following decades, which produced a continuously increasing number of federal laws and regulations relating to local education and an accompanying increase in federal education spending. Figure 1 provides a synopsis of major federal laws affecting education since the Land Ordinance of 1785.²⁸ It shows that in the first century and a half since the nation’s founding, federal education legislation was almost nonexistent. It began to increase with the Lanham Act and other World War II–related legislation, including the GI Bill, which was introduced in 1944.²⁹

In the 1950s, additional laws authorized new impact aid programs, library services, education research, and vocational training. The NDEA passed in 1958 and set the stage for the 1960s, a decade that saw an unprecedented number of federal policies that would mark a significant turning point in federal involvement. Succeeding decades would see similarly high levels of legislation, with a rapid climb in the 1990s.

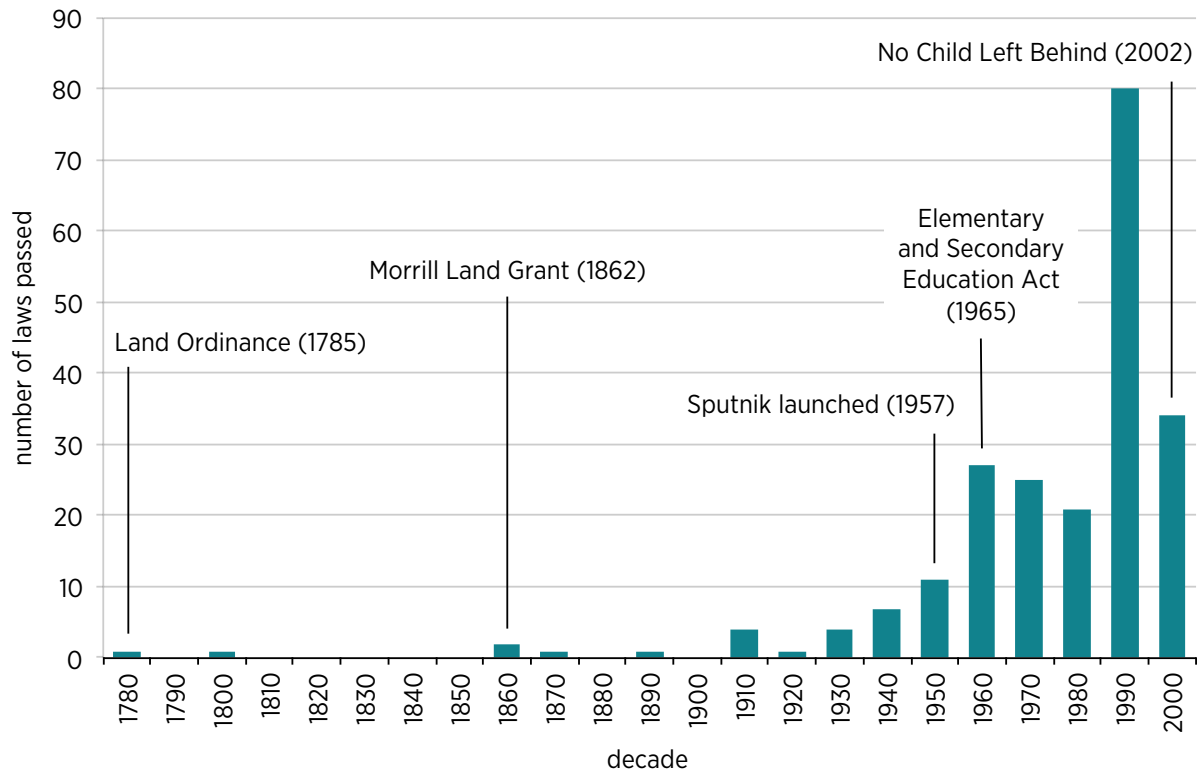
The federal expansion into local schooling policies is mirrored not only in the increasing amount of legislation, but also in the number of federal dollars funneled into schools during the same time period. Figure 2 shows changes in federal outlays across time, both in total outlays and in outlays per student. Nominal outlays increased slowly but steadily in the first half of the century, but began a sharp escalation in the 1960s, growing at an exponential rate of almost 10

²⁸ This figure is based on counts from US Department of Education, *Digest of Education Statistics*, “Chronology of Federal Education Legislation” (Washington, DC: National Center for Education Statistics, 1990–2012). While the *Digest* provides a thorough timeline of federal legislation, it is not meant to be comprehensive. Therefore, the figure is meant to be descriptive of the trend across time, but may not include every federal law that affects education.

²⁹ Several pieces of legislation related to school lunches were also introduced in the 1940s, including the School Lunch Indemnity Plan and the National School Lunch Act. See US Department of Education, *Digest of Education Statistics* (Washington, DC: National Center for Education Statistics, 2005).

percent between 1960 and 2010.³⁰ Even after controlling for inflation, changes in real outlays show extensive growth across the century.

Figure 1. Federal Education Laws by Decade, 1780–2010



Source: Counts collected from listings of in multiple volumes of US Department of Education, *Digest of Education Statistics*, “Chronology of Federal Education Legislation” (Washington, DC: National Center for Education Statistics, 1990–2012).

Note: Because only the laws listed in this source are included, this table is not intended to be completely comprehensive.

In the 1919/20 school year, the funds allocated to elementary and secondary schools from federal sources were a little under \$29 million in 2013 dollars,³¹ or about \$1.34 per

³⁰ Nominal spending was \$651.6 million in 1960 and \$76 billion in 2010, yielding an exponential growth rate of 9.8 percent.

³¹ Inflation-adjusted outlays are created using the Consumer Price Index for All Urban Consumers (CPI-U). All dollar amounts, unless otherwise noted, are expressed in 2013 dollars. The nominal level of federal elementary and secondary funding in the 1919/20 school year was \$2,475,000.

student.³² That number climbed slowly (but still remained relatively low) through the 1940s and began to rise more quickly in the 1950s. The 1960s, the decade in which the ESEA was first enacted, saw unprecedented growth in funds coming from federal sources. In 1960, federal outlays totaled \$5.1 billion. By the end of the decade, the number had reached \$19.1 billion—more than a 270 percent increase, even after controlling for inflation.³³ Although some of that growth can be attributed to additions in student enrollment across the time period, increases in per-student outlays tell a similar story. Federal spending per student almost tripled in real terms, from about \$145 in 1960 to more than \$425 10 years later.

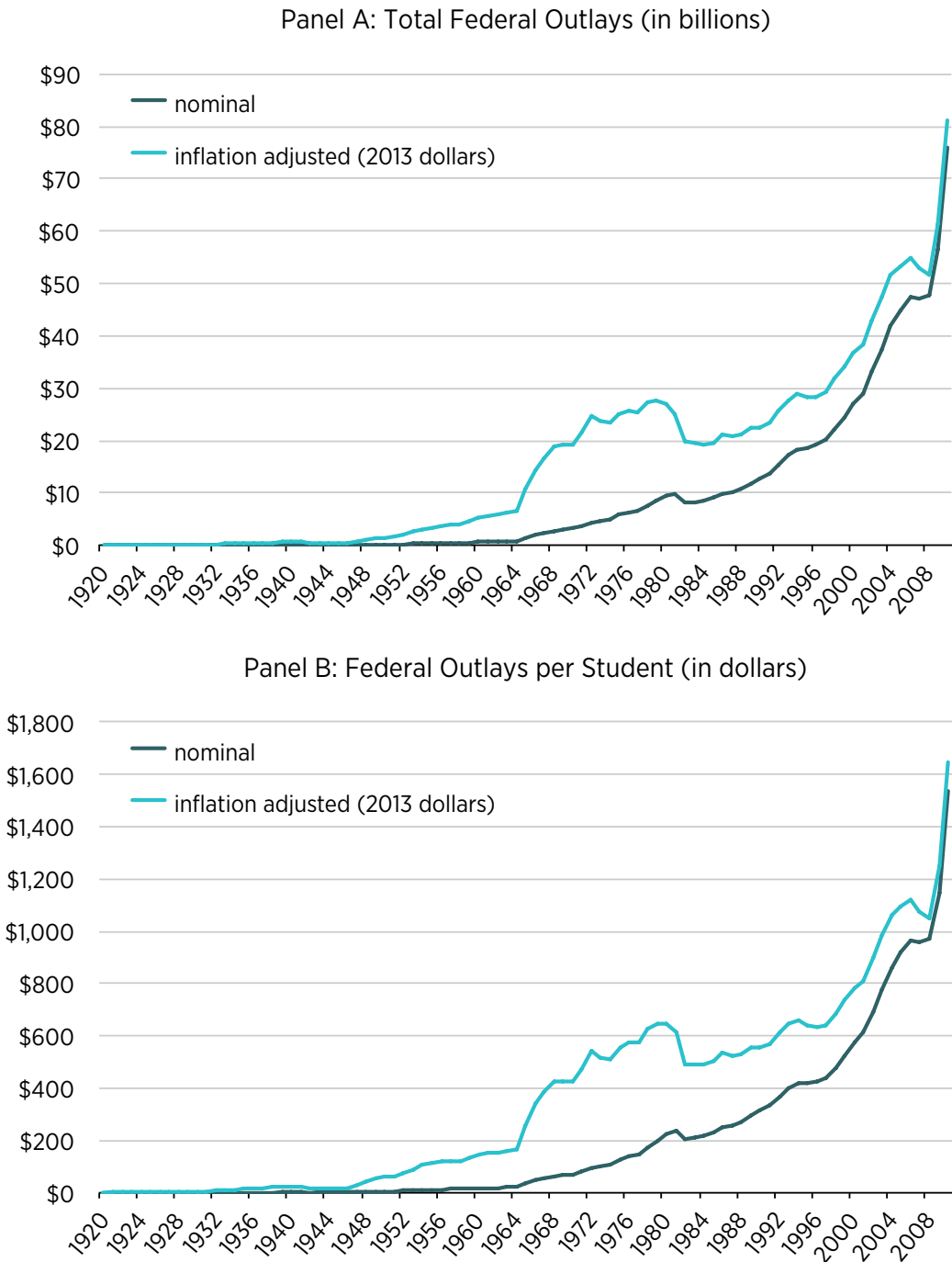
Federal outlays continued to rise through the 1970s as more and more categorical programs became federally funded; by the end of the decade, total outlays hovered around \$28 billion, and per-student outlays reached almost \$650. Trends shifted somewhat in the 1980s. There was still a nominal increase in funding, but inflation-adjusted numbers fell for the first time. That trend was reversed in the 1990s and the first few years after 2000, as both real and nominal numbers skyrocketed. By 2002, when No Child Left Behind was enacted, federal outlays totaled \$43 billion or \$900 per student, numbers that would continue to increase in subsequent years. With funds from the American Recovery and Reinvestment Act³⁴ included, outlays in 2010 exceeded \$81 billion, a level of spending that, in real terms, is more than 2,800 times federal outlays in 1920. Even after accounting for both inflation and increases in the student population since the beginning of the century, the growth in spending is noteworthy; the \$1.34 in federal funds spent per student in 1920 had increased to almost \$1,645 in 2010.

³² Per-student numbers are calculated by dividing total federal outlays by total number of students enrolled in public elementary or secondary schools.

³³ The nominal increase in federal outlays during the 1960s was 394 percent.

³⁴ American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

Figure 2. Federal Outlays for Elementary and Secondary Schools, 1920–2010



Source: Created with data from tables 3 and 202 in US Department of Education, *Digest of Education Statistics, 2012* (Washington, DC: National Center for Education Statistics, 2012). Funding data prior to 1990 are from table 156 in *Digest of Education Statistics, 2002*.

Notes: Original source reports public elementary and secondary school revenues from federal sources. Sources include annual funding data from 1970 until 2010. Data from 2010 are the most recent available data in this series. Inflation-adjusted numbers are created using CPI-U. Data between 1940 and 1970 are biannual. Data prior to 1940 are by decade. Yearly outlay data points prior to 1970 are interpolated using the available data. Outlays per student are calculated by dividing total outlays by total public school enrollment. Enrollment data prior to 1955 are interpolated from decade data.

4. The Elementary and Secondary Education Act

The legislation that is perhaps most directly responsible for igniting the expansion in federal control was the Elementary and Secondary Education Act, signed by Lyndon Johnson on April 11, 1965. In Johnson's words that day, the law represented "the most sweeping educational bill to ever come before Congress."³⁵ This legislation, one of the major components of Johnson's Great Society program, was the culmination of almost 20 years of attempts to create extensive federal guidelines relating to elementary and secondary schooling. In Johnson's estimation, the law was one of his greatest achievements as president. After signing the bill, he concluded his speech by saying, "I believe deeply that no law I have signed or will ever sign means more to the future of America,"³⁶ a significant statement, given that he had signed the Civil Rights Act of 1964 less than a year before.

The legislation itself was originally broken down into five titles, plus a title for general provisions. Title I, "Financial Assistance to Local Education Agencies for the Education of Children of Low-Income Families," was the main thrust of the law. As a cornerstone of Johnson's War on Poverty, Title I provided federal funding targeting schools with large percentages of low-income students. The law allowed eligible local education agencies (LEAs) to apply for grants to be used for programs aimed at the needs of "educationally deprived children" from low-income backgrounds.³⁷ In its inception, the ESEA was a compensatory education law meant to provide additional resources specifically for these low-income students. Eligibility for Title I funds was based on the number of students within the district belonging to

³⁵ LBJ Presidential Library, "Signing of the Elementary and Secondary Education Act, 4/11/65," SN WHCA285-1, YouTube video, 6:46, posted by "TheLBJLibrary," August 30, 2012, <http://www.youtube.com/watch?v=QQzCV1UdPLc>.

³⁶ Ibid.

³⁷ Pub. L. No. 89-10 (1965).

families with annual incomes below a predetermined threshold,³⁸ calculated using state-level average expenditure per student. The maximum basic grant an LEA could receive was based on the following formula:

$$\left(\begin{array}{l} \text{no. of children ages 5–17 in the district from} \\ \text{families with incomes below threshold} \end{array} \right) \times 0.5 \left(\begin{array}{l} \text{average per-student} \\ \text{expenditure in the state} \end{array} \right).^{39}$$

An LEA that qualified for a basic grant was also eligible to apply for additional support through special incentive grants, provided that the funds would be used to meet the educational needs of low-income students.

Title II of the law appropriated an initial \$100 million⁴⁰ in grants to states for the purchase of library materials and additional instructional resources. Title III provided grants for the creation of “supplementary educational centers and services.” The funding covered a wide range of projects including recreation centers, counseling centers, rural academic centers, and resources for specialized academic programs in art, science, music, or foreign languages. This title also established the Advisory Committee on Supplemental Educational Centers and Services to review grant proposals and administer the funds. Title IV of the ESEA allowed the commissioner of education to make grants to universities or other organizations for education-related research projects or training in education research. Title V of the legislation, known as the Cooperative Research Act, offered grants specifically for state boards of education. These grants were to be used for purposes including statewide education planning, data collection, curriculum research, and teacher preparation and training programs.

³⁸ The initial threshold in 1965 was \$2,000 (in nominal 1965 dollars).

³⁹ Pub. L. No. 89-10 (1965). Students from families whose incomes exceeded the threshold because of payments from Aid to Families with Dependent Children are included in the count. Average per-student expenditure is based on average per-student spending in the state two years before the year of calculation.

⁴⁰ Nominal amount in 1964 dollars. This is equivalent to approximately \$751 million in 2013 dollars.

The ESEA in general—while broad in its scope compared to previous federal education legislation—mainly provided grants to states and LEAs without exceedingly specific guidelines relating to the ways in which local schools could use the funds. Most sections of the law relating to grant application requirements were relatively general and allowed states a large degree of flexibility in creating programs that fulfill the conditions of the law.

While the ESEA provided unprecedented levels of federal funding, the intent was explicitly never federal control. Section 604 under “General Provisions” appears unassumingly as the next-to-last sentence of the law. It is titled “Federal Control of Education Prohibited” and states,

Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system.⁴¹

Future reauthorizations of the ESEA and other federal policies would come close to violating the section 604 provision; others would seem to defy it altogether. A law that began as a source of federal funding targeting a specific group of students would expand and transform over the years into a body of legislation that seems to impose a great deal of federal control on many aspects of the local school system.

The law came with an immediate increase in federal education funding. Almost overnight, elementary and secondary education revenues stemming from federal sources more than doubled. In 1964, federal support totaled \$6.7 billion in 2013 dollars. Two years later, it

⁴¹ Pub. L. No. 89-10, § 604 (1965).

topped \$14 billion and was nearing \$20 billion by the end of the decade.⁴² The stream of federal funds pouring into local schools, which would pass the \$80 billion mark by 2010, had begun.

As the ESEA was reauthorized and amended in the following years, it grew in its breadth of coverage as well as in its level of prescription. Table 1 summarizes some of the major reauthorizations and amendments of the ESEA.

In 1966, the ESEA was reauthorized and amended to include Title VI (Education of Handicapped Children).⁴³ This title provided federal grant money to target children with disabilities in elementary and secondary schools, as well as in preschools. States were eligible to submit plans for the creation or expansion of programs for children with disabilities. The legislation was very broad in its program requirements; most of the conditions for eligibility dealt with a state's assurance that the funds would actually be used for its described purpose. The law created the Bureau for Education and Training of the Handicapped within the Office of Education to administer and manage the related programs and funds. The law also established the National Advisory Committee on Handicapped Children for the purpose of evaluating the efficacy of the programs and reporting to Congress.⁴⁴

Two years later, in 1968, the ESEA was reauthorized and amended to include Title VII (Bilingual Education Programs). The Bilingual Education Act, as it is often called, authorized funds “to develop and carry out new and imaginative elementary and secondary programs” that would address the needs of students with limited English proficiency. The act also formed the

⁴² US Department of Education, *Digest of Education Statistics* (Washington, DC: National Center for Education Statistics, 2002), table 156 (cited in McCluskey, *Feds in the Classroom*, 42). See figure 2 for more broad trends. The dollar amounts cited here are in constant 2013 dollars. The nominal amounts are \$897 million in 1964, \$2 billion in 1966, and \$3.2 billion in 1970.

⁴³ The existing Title VI (General Provisions) became Title VII.

⁴⁴ Pub. L. No. 89-750 (1966).

Advisory Committee on the Education of Bilingual Children to evaluate the criteria for grant proposals and provide recommendations for administering the act.⁴⁵

Table 1. Elementary and Secondary Education Act Reauthorizations and Amendments

Year	Law	Main changes
1965	Pub. L. No. 89-10	provides federal funding for low-income schools, library materials, supplemental services, education research, and state boards of education
1966	Pub. L. No. 89-750	adds Title VI (Education of Handicapped Children), creates the Bureau for Education and Training of the Handicapped, creates the National Advisory Committee on Handicapped Children
1968	Pub. L. No. 90-247	adds Title VII (Bilingual Education), creates the Advisory Committee on the Education of Bilingual Children
1974	Pub. L. No. 93-380	changes Title I funding allocations, establishes Office of Bilingual Education, establishes National Advisory Council on Bilingual Education, authorizes research by the National Institutes of Health on bilingual education, creates National Center for Education Statistics and Advisory Council on Education Statistics, provides for various categorical programs
1978	Pub. L. No. 95-561	changes and expands Title I funding uses, increases regulations relating to parent advisory councils, expands provision of categorical programs, creates multiple new offices, councils, committees, and commissions
1981	Pub. L. No. 97-35	eliminates several categorical programs and consolidates others into state block grants, increases states' flexibility in controlling allocation of federal funds
1988	Pub. L. No. 100-297	provides for the creation of national evaluation standards for Title I programs, upgrades status of National Center for Education Statistics, requires state standards relating to student performance of Title I children
1994	Pub. L. No. 103-382	ties federal money to requirement that states adopt standards consistent with Goals 2000, requires state exams assessing performance under related standards, requires states to define "adequate yearly progress"
2002	Pub. L. No. 107-110	establishes accountability targets for both students and teachers, requires states to implement accountability programs that include math and reading testing for all third through eighth grade students, requires states and districts to meet adequate yearly progress goals, establishes heightened teacher education requirements, establishes punitive consequences for failing schools

In 1974, congressional debate relating to reauthorizing the ESEA centered on figures from the 1970 census that had recently been released. Data indicated that the population was

⁴⁵ Pub. L. 90-247 (1968).

shifting toward the South and the West, and away from the Northeast. Title I appropriations were allocated on the basis of population, and—until that point—the population figures had been based on the 1960 census. Representatives from states with increasing populations rallied to increase their funding accordingly, and representatives from the Northeast clamored to keep their funds at current levels.⁴⁶ After much heated deliberation, the final version of the legislation increased appropriations for the states with population increases based on the 1970 census, but mitigated the losses in the northeastern states by requiring that no state’s funding level could drop below 85 percent of its previous year’s allocation. Congress also raised the federal poverty-line eligibility threshold for funding.⁴⁷

The 1974 legislation brought with it more than changes in funding allocation. It included a revision of the Bilingual Education Act and established the Office of Bilingual Education within the Office of Education. It authorized funding for bilingual research through the National Institutes of Health and created the National Advisory Council on Bilingual Education, which would advise the Commissioner of Education.⁴⁸ It also authorized appropriations for many specific categorical programs, including education relating to the metric system. The section describing this program highlights what Congress believed to be a vital role of the federal government in the American education system. The law reads, “Congress finds that . . . increased use of such metric system in the United States is inevitable . . . there is no existing Federal program designed to teach children to use such metric system and such a program is necessary if

⁴⁶ Cross, *Political Education*, 51–52.

⁴⁷ Marvin H. Kusters and Brent D. Mast, *Closing the Education Achievement Gap: Is Title I Working?* (Washington, DC: American Enterprise Institute for Public Policy Research, 2003), 20.

⁴⁸ The National Advisory Council on Bilingual Education was commissioned under the new Office of Bilingual Education, but it served largely the same purpose as the Advisory Committee on the Education of Bilingual Children, created under the Office of Education in 1968. The latter committee was terminated in 1976. See *Federal Advisory Committees—Fifth Annual Report of the President, Covering the Calendar Year 1976* (Washington, DC: Government Printing Office, 1977), 72.

the American people are to adapt to the use of the metric system of weights and measures.”⁴⁹ The program carried with it an annual authorization of \$10 million.⁵⁰ Other categorical programs created by the law included education for gifted and talented children, community schools, career education, consumer education, women’s equity in education, and arts in education.⁵¹

The 1978 reauthorization of the ESEA shifted the way in which schools could use Title I funds. Previous versions of the law required that Title I money be used only for students from low-income families, which precluded school-wide programs for many schools. The legislation was rewritten in 1978 to allow schools where low-income students comprised at least 75 percent of the total student body to allocate the funds to school-wide programs that would influence all students, not just those from low-income backgrounds.⁵² The legislation provided increased regulations for parent advisory councils that had been established by the 1974 reauthorization.⁵³

The 1978 version of the ESEA also reauthorized the metric system education program and doubled its funding. The number of other discretionary and categorical programs skyrocketed. Other projects covered by the legislation included arts in education, preschool partnership programs, consumer education, youth employment, law-related education, environmental education, health education, correctional education, biomedical sciences, population education, gifted and talented education, educational proficiency standards, women’s educational equity, safe schools grants, ethnic heritage programs, and inexpensive book distribution programs.⁵⁴ New offices, councils, and committees were established along with the programs, including the Office of Environmental Education, the Office of Consumer Education,

⁴⁹ Pub. L. No. 103-382 (1994), 546.

⁵⁰ Nominal amount in 1974 dollars. This is equivalent to approximately \$47 million in 2013 dollars.

⁵¹ Pub. L. No. 103-382 (1994).

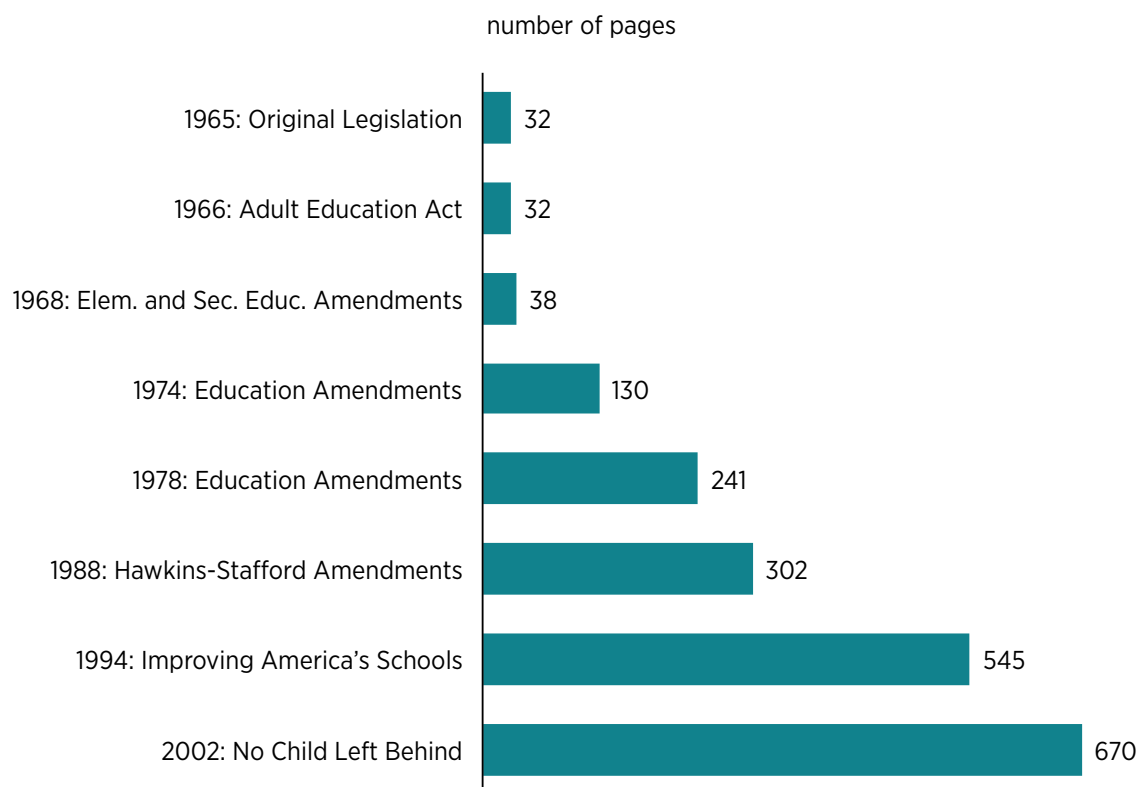
⁵² Kusters and Mast, *Closing the Education Achievement Gap*, 20–21.

⁵³ Cross, *Political Education*, 68.

⁵⁴ Pub. L. 95-561 (1978). A similar list appears in Cross, *Political Education*, 69.

the National Advisory Council on Women’s Education Programs, the National Council on Ethnic Heritage Studies, and the National Commission of the International Year of the Child.⁵⁵

Figure 3. Major Elementary and Secondary Education Act Reauthorizations and Amendments



Source: Author’s calculations from original legislation. Original US Statutes at Large were accessed from HeinOnline at <http://home.heinonline.org/>.

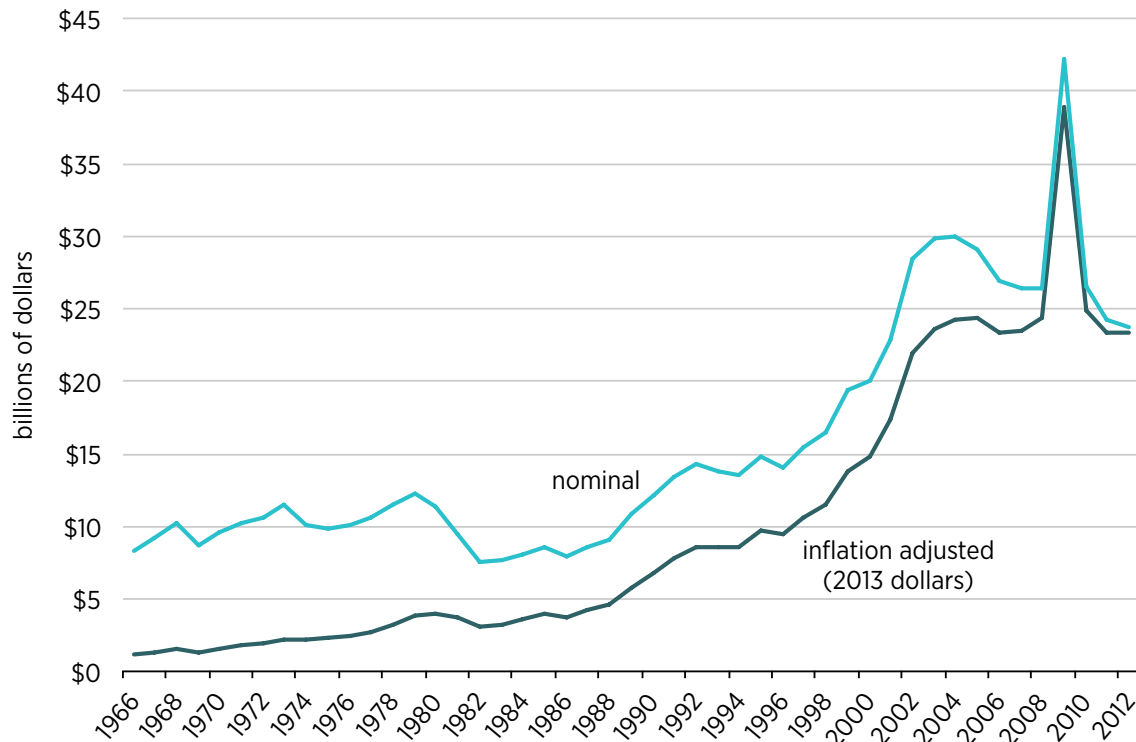
Note: Chapter V of the Omnibus Budget Reconciliation Act of 1981 (577 pages in total) was 42 pages and included the Education Consolidation and Improvement Act, which reauthorized the ESEA and consolidated several programs into block grants.

Each new reauthorization of the ESEA expanded the role of the federal government in local education. What had begun as a law targeted specifically at ensuring the provision of education for low-income students now included dozens of grants, programs, and initiatives—

⁵⁵ Pub. L. 95-561 (1978).

many of which seemed only distantly related to the original intent of the law. This expansion is mirrored in the length of the legislation itself. Figure 3 shows changes in the ESEA amendment page length across time. The original 1965 law was 32 pages long. Its reauthorization in 1970 was 75 pages, and by 1978, the law reauthorizing it had grown to 241 pages.

Figure 4. Annual Elementary and Secondary Education Act Appropriations, 1966–2012



Source: Created from ESEA Appropriations table available by request from the US Department of Education.

Note: Inflation-adjusted numbers are calculated using CPI-U. Data from 2009 include appropriations from the American Recovery and Reinvestment Act of 2009.

With the expansion of legislative coverage came an expansion of appropriations to fund it. Figure 4 shows annual congressional appropriations for the ESEA from 1966 until 2012. The original appropriation in 1966 was almost \$8.3 billion in 2013 dollars. That number increased steadily across the decades as the act expanded, with accelerating growth in the 1990s. Stimulus

spending vaulted ESEA appropriations to more than \$42 billion before they returned to about \$26.6 billion in 2010.⁵⁶

5. The Department of Education

In 1965, the ESEA began a new era in federal involvement and education spending. This is mirrored in the breadth of the regulations themselves, as well as in the amount of funding allocated to elementary and secondary schools. One element that had been absent in this federal expansion up to this point was an executive-level education department. An education department had existed for more than a century, but not at the executive level. The story of its expansion since the Civil War era and its eventual reestablishment in 1979 is a reflection of the growth of federal education policies themselves.

The original US Department of Education was a small office without cabinet-level representation, and was the result of many years of congressional debate. Following ratification of the Tenth Amendment, there was strong opposition to a federal department focused on education because most representatives considered education a matter to be left to the states.

However, the passing of the Morrill Bill in 1862 opened the door for federal involvement in education. In 1866, after prompting from the National Association of School Superintendents, James Garfield (who was then a congressional representative from Ohio) introduced legislation to create a federal education department with an initial appropriation of \$13,000.⁵⁷ After much

⁵⁶ Available on request from the US Department of Education. Dollar amounts are in constant 2013 dollars. Nominal amounts are \$1.1 billion in 1966, \$38.8 billion with the stimulus fund in 2009, and \$25 billion in 2010.

⁵⁷ Harry Kursch, *The United States Office of Education: A Century of Service* (Philadelphia: Chilton Books, 1965), 9–10. Dollar amount is in nominal 1866 dollars. This is approximately \$197,000 in 2013 dollars.

deliberation, Congress passed the bill more than a year later. President Andrew Johnson signed it and the US Department of Education was established.⁵⁸

Garfield sold the department mainly as a statistics-collection center that would provide general information on teachers and schools across the states. The act itself stated,

There shall be established, at the city of Washington, a department of education, for the purpose of collecting such statistics and facts as shall show the condition and progress of education in the several states and territories, and of diffusing such information respecting the organization and management of schools and school systems, and methods of teaching, as shall aid the people of the United States in the establishment and maintenance of efficient school systems, and otherwise promote the cause of education throughout the country.⁵⁹

The act called for just four employees to run the department—a commissioner of education, a head clerk, and two assistant clerks. Combined, their annual salaries totaled less than \$10,000.⁶⁰ Their primary function was to collect information on the condition of education in the United States and to make a report to Congress.⁶¹ The commissioner’s job was not a cabinet position, and, outside the annual congressional report, the department initially had little influence over local education. In fact, owing mainly to fears of federal intrusion into what was viewed as a state responsibility, the brand-new “Department of Education” was nominally demoted the following year to the “Office of Education” and soon thereafter to the “Bureau of Education.” It eventually regained its title of “Office of Education” and in 1939 was moved to the Federal Security Agency (FSA), then a cabinet-level department. When the FSA was abolished and its departments restructured in 1953, the Office of Education became a part of the Department of Health, Education, and Welfare (HEW), where it remained for the next few decades.⁶²

⁵⁸ Ibid., 11.

⁵⁹ 14 Stat. L. 434 (cited in Kursch, *United States Office of Education*, 11–12).

⁶⁰ Dollar amount is in nominal 1866 dollars. This is approximately \$151,000 in 2013 dollars.

⁶¹ Kursch, *United States Office of Education*, 12.

⁶² Ibid., 13.

By this time, the role of the Office of Education had expanded from data collection to include other specific functions under its authority to “promote the cause of education throughout the country.” These functions included contracting with public and private organizations to provide research on various education-related topics, supplying consulting services to states, and managing federal education programs. In addition, the office was in charge of huge amounts of federal funding for grants and programs.⁶³ As its role grew, so did its staff. The four-employee department had grown to 300 in 1950, and had reached 1,500 by the early 1960s.⁶⁴

The office was now divided into three bureaus: the Bureau of Educational Research and Development, the Bureau of International Education, and the Bureau of Educational Assistance Programs. Figure 5 shows the layout of the department in 1965, a substantial expansion from the initial organization of the department in 1867. The Bureau of Educational Research and Development, as its name implied, was in charge of promoting education research and allocating federal funds to specific projects. At times, it also allocated funds to specific programs as a result of its various research projects.⁶⁵ The Bureau of International Education worked mainly in conjunction with other federal organizations, such as the Bureau of Education and Cultural Affairs within the US Department of State. It also prepared policy statements for international conferences and encouraged the inclusion of international material in school curricula.⁶⁶ The Bureau of Educational Assistance Programs managed the funding of most federal education programs, such as local and state grants, vocational programs, and university assistance programs.⁶⁷

⁶³ Ibid., 40.

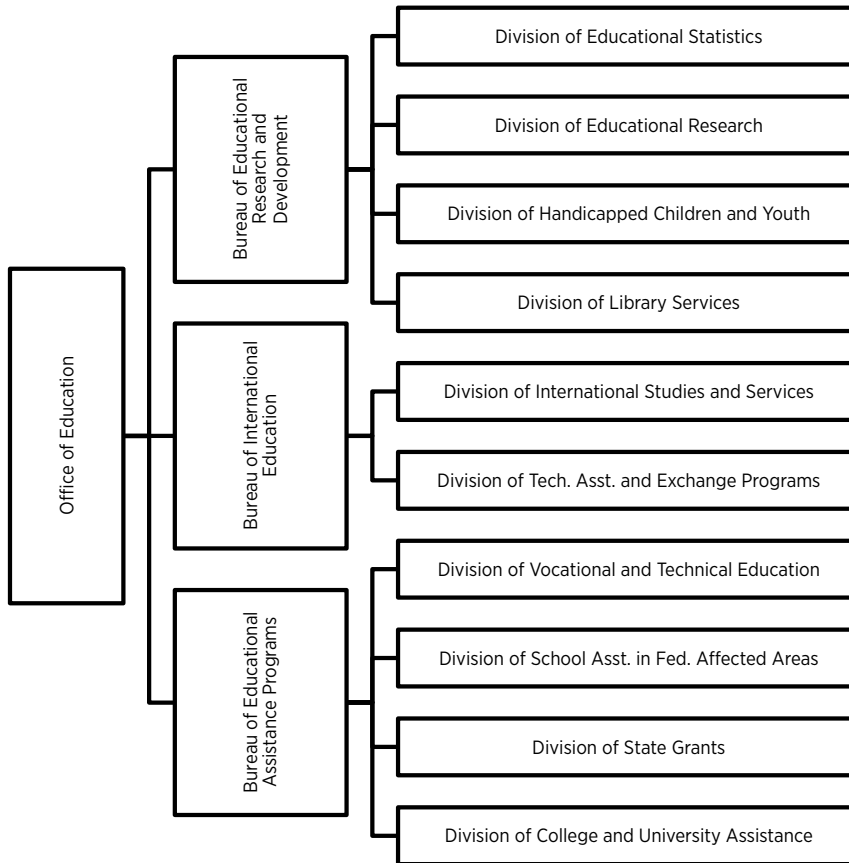
⁶⁴ Ibid., 38.

⁶⁵ Ibid., 59.

⁶⁶ Ibid., 80.

⁶⁷ Ibid., 88–89.

Figure 5. Organization of the Office of Education, 1965



Source: Harry Kursch, *The United States Office of Education: A Century of Service* (Philadelphia: Chilton Books, 1965).

Along with the increase in staff size, responsibilities, and authority came an increase in the department’s budget. In 2013 dollars, the initial administrative budget of \$197,000 grew to \$19.5 million in 1950 and to about \$112 million by early 1965.⁶⁸ In real per-student terms, the budget increased from less than three cents per student in 1866 to about 78 cents in 1950 to more

⁶⁸ Ibid., 39. Dollar amounts are all in constant 2013 dollars. Nominal amounts are \$10,000 in 1866, \$2 million in 1950, and \$15 million in the early 1960s.

than \$2.70 in 1965.⁶⁹ By 1965, the overall budget of the Office of Education had reached more than \$11 billion.⁷⁰

Although the office was now a main branch of a cabinet-level department, proponents of the office—including the National Education Association (NEA)—continued to rally for it to be removed from the Department of Health, Education, and Welfare and established as a separate cabinet department. These proposals would become reality after the election of Jimmy Carter as president in 1976. Carter had run on education issues in the primaries and had received strong backing from the NEA. The NEA had recently created its own political action committee and was looking for more national visibility for education issues. In exchange for NEA support, Carter had agreed to establish the Department of Education as a separate department with cabinet representation.⁷¹

Opposition to this change was strong and widespread. It included members of Congress who continued to believe that the federal role in education should be minimized, HEW representatives who did not want to lose a huge branch of their department, and members of the American Federation of Teachers who were concerned about the close relationship its rival organization (the NEA) would have with the new department.⁷² Despite high levels of resistance, the NEA continued to lobby Carter. After years of debate and several close committee and full session votes (the vote in the House was 210 to 206), Congress passed the bill. Carter signed

⁶⁹ Per-student amounts are calculated using number of public school students from US Department of Education, *Digest of Education Statistics* (Washington, DC: National Center for Education Statistics, 2012), table 3. The calculation for 1866 is estimated using data from the 1869/70 school year, which is the earliest year available in the series.

⁷⁰ “An Overview of the US Department of Education,” US Department of Education, *Digest of Education Statistics* (Washington, DC: National Center for Education Statistics, 2010). http://www2.ed.gov/about/overview/focus/what_pg2.html. The nominal budget in 1965 was \$1.5 billion.

⁷¹ McCluskey, *Feds in the Classroom*, 49–51; and Cross, *Political Education*, 56–57.

⁷² McCluskey, *Feds in the Classroom*, 51.

Public Law No. 96-88 on October 17, 1979, and the Office of Education was promoted to a true cabinet-level Department of Education.⁷³

Along with the change came a restructuring of the department and a widening of the path to an expanded federal role in education policy. During the next several decades, the bureaucracy of the department would swell, as would its annual congressional appropriations. The pattern of congressional appropriations to the Department of Education largely reflects the pattern shown previously in ESEA appropriations (see figure 4). In 1980, the year of the department's inception, elementary and secondary funds totaled more than \$19.6 billion in 2013 dollars.⁷⁴ As a reference point, total spending for the entire Office of Education in 1965 was just over \$11 billion in 2013 dollars.⁷⁵ After the passage of No Child Left Behind in 2002, elementary and secondary appropriations rose past the \$40 billion mark and would remain at that level for the next decade, at times reaching almost \$46 billion. In the name of job creation and fiscal stabilization, the American Recovery and Reinvestment Act of 2009 funneled more than \$86 billion to elementary and secondary purposes, raising total appropriations that year to almost \$130 billion.⁷⁶

Regulations also increased as the department grew, following the expansion in legislation. As detailed as the legislation itself was, much of it opened the door for administrative rules created by the Department of Education. Permanent rules established by executive departments of the government and authorized by federal statutes are listed in the *Federal Register*; these rules are compiled annually in the *Code of Federal Regulations*. Since 1980, Title 34 of the *Code of Federal Regulations* has published Department of Education's established

⁷³ McCluskey, *Feds in the Classroom*, 52.

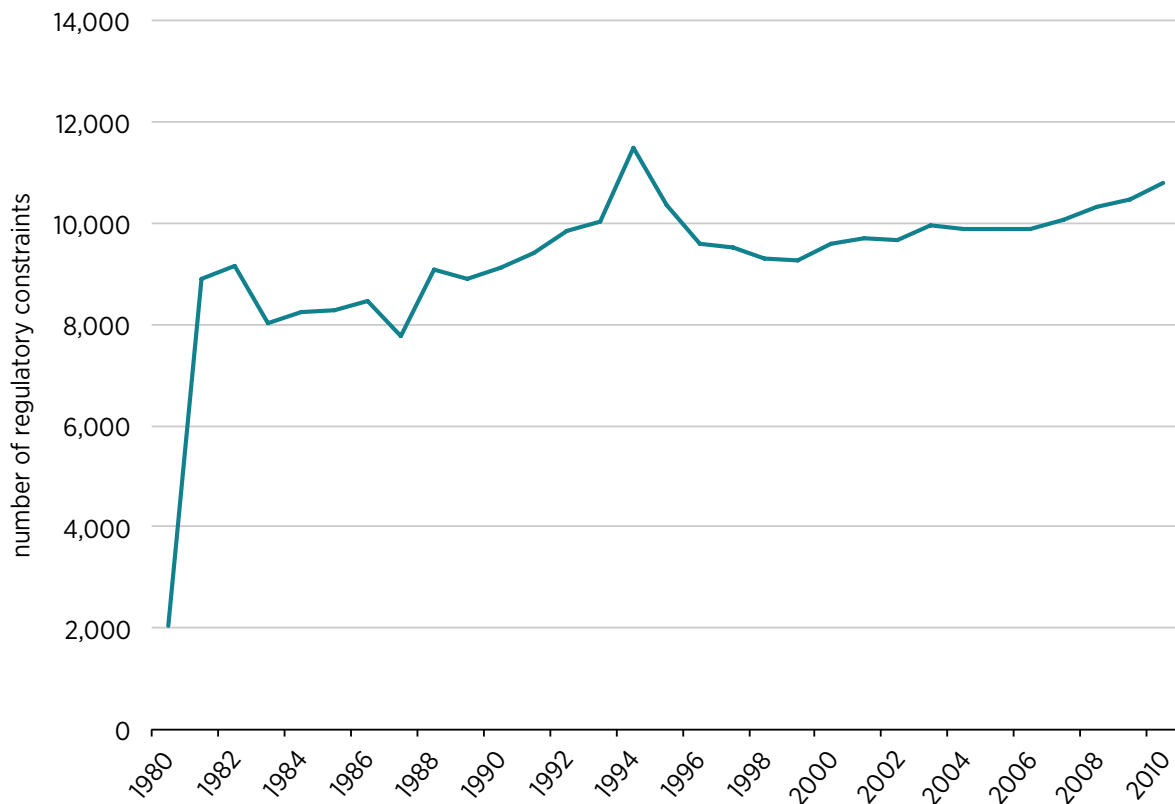
⁷⁴ "Budget History Tables," US Department of Education, last modified May 1, 2014, <http://www2.ed.gov/about/overview/budget/history/index.html>.

⁷⁵ "Overview of the US Department of Education."

⁷⁶ "Budget History Tables." All dollar amounts are in constant 2013 dollars.

rules. Figure 6 shows how the federal regulatory burden related to education has increased since that year.⁷⁷ The regulatory burden is measured by a count of the number of “constraints” in the published rules. To qualify as a constraint, a rule must include the words “may not,” “must,” “prohibited,” “required,” or “shall.” The number of constraints is a total count of all of these words. In 1980, the total number of constraints was just over 2,000. That number increased the following year to almost 8,900, and by 2010 had grown to about 10,800.

Figure 6. Federal Regulatory Constraints under Title 34 of the *Code of Federal Regulations*, 1980–2010



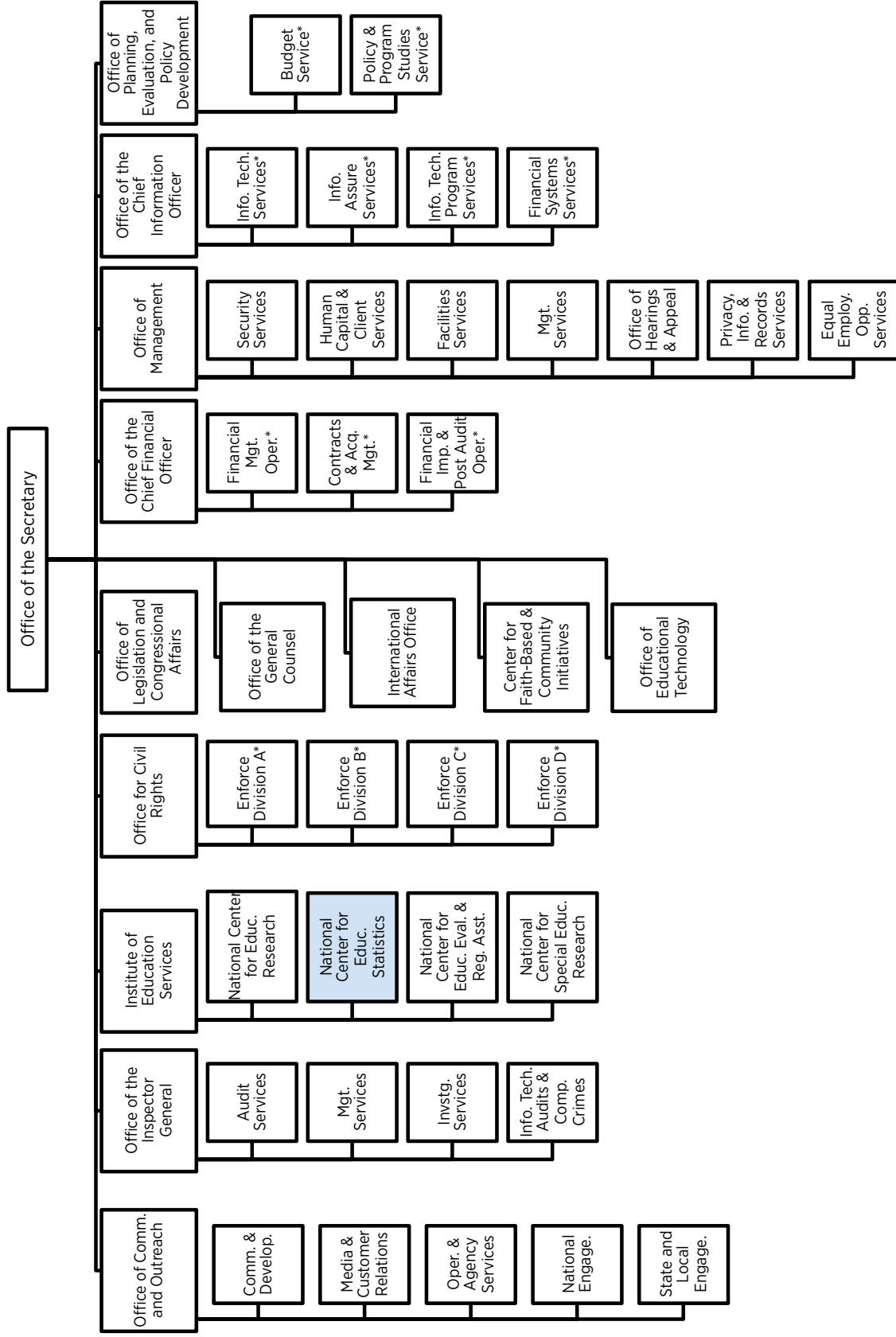
Source: Data available from Mercatus Center at George Mason University (regdata.mercatus.org). Regulation count originates from Title 34 (Education) from the *Code of Federal Regulations*. Title 34 was first published in 1980 with the inception of the cabinet-level Department of Education.

⁷⁷ This information is available from the RegData project at the Mercatus Center at George Mason University (regdata.mercatus.org). Full documentation of the project, including a detailed description of the methodology, is available on its website.

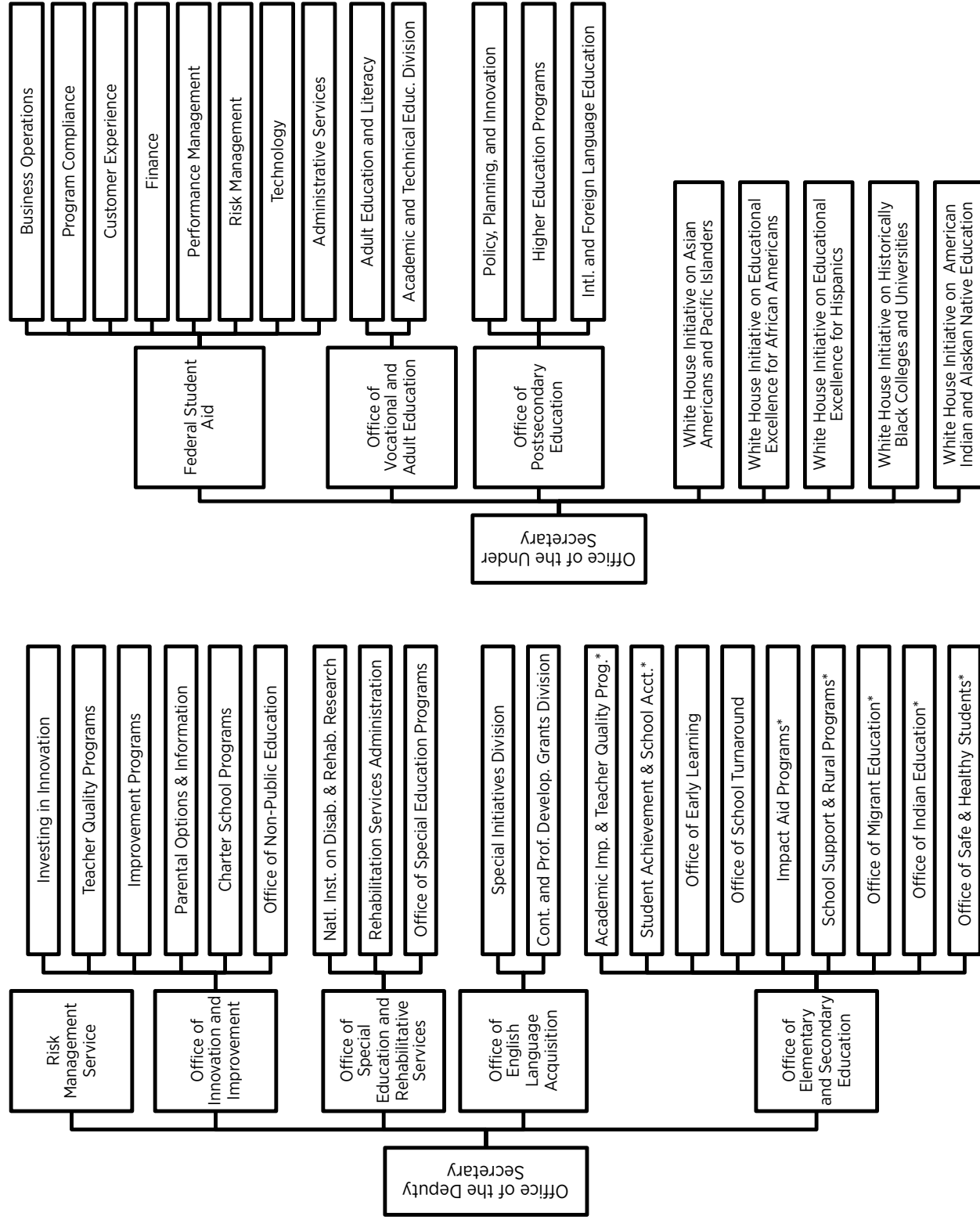
Increases in budgets and restrictions were mirrored by organizational expansion. By 2013, the department had expanded into dozens of different offices, institutes, and centers. Figure 7 shows the structure of the Department of Education as of 2013. When the department began in 1867, its primary specified function had been to gather and disseminate statistics on the condition of education across the states. What was once the main purpose of the entire department was now housed in the National Center for Education Statistics, just one branch in an ever-expanding structure.⁷⁸

⁷⁸ McCluskey, *Feds in the Classroom*, 49.

Figure 7. Organization of the Department of Education, 2013



* There are additional subgroups or divisions below this organizational unit.



* There are additional subgroups or divisions below this organizational unit.

Source: US Department of Education, "Coordinating Structure," last modified January 30, 2014, <http://www2.ed.gov/about/offices/or/index.html?src=ln>.

6. Reagan's Attempt to Consolidate

In the 1980 presidential election, Ronald Reagan defeated incumbent Jimmy Carter and began implementing plans for federal education policy that stood in clear contrast to those carried out under his predecessor. Reagan's strategies centered on consolidating categorical programs into block grants, reducing levels of federal spending, and abolishing the Department of Education that Carter had just created.⁷⁹ While Reagan would not succeed in eliminating the Department of Education and its place in the cabinet, he would at least partially accomplish his other two goals.

In June 1981, Reagan signed the Education Consolidation and Improvement Act (ECIA) as part of the much larger Omnibus Budget Reconciliation Act of 1981. Part of the act was a reauthorization of the ESEA, but the legislation's main goal was to address the proliferation of categorical programs that had been authorized in the 1970s. Many of those programs were eliminated and others were consolidated under authorized programs that states could pursue with block grants. With the removal of many of the program-specific authorizations, states had more leeway in the use of their federal funds under the ESEA.⁸⁰ An additional goal of this shift toward state control was that it would "greatly reduce the enormous administrative and paperwork burden imposed on schools."⁸¹ In the end, both the number of programs authorized and the federal funding associated with those programs were reduced.⁸²

With the signing of the ECIA, Reagan began his term as president by attempting to reverse the expansion of federal education policy. In the coming years, however, his plans would be hindered—in a large part, at least, by the publication of *A Nation at Risk* by the National

⁷⁹ Cross, *Political Education*, 75.

⁸⁰ *Ibid.*, 74.

⁸¹ Pub. L. No. 97-35 (1981), 469.

⁸² Cross, *Political Education*, 75. (According to Cross, under chapter 2 of ECIA, states were "given control over a federal appropriation of almost \$500 million . . . an amount about 20% smaller than the total of the programs that were consolidated.")

Commission on Excellence in Education. The commission, which had been appointed by the secretary of education in 1981, published a self-proclaimed “open letter to the American people” on the state of the US education system. The report, which presents findings on curriculum, teachers, and student achievement across the United States, declares,

Our Nation is at risk. Our once unchallenged preeminence . . . is being overtaken by competitors throughout the world. . . . The educational foundations of our society are being presently eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people. . . .

If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war. As it stands, we have allowed this to happen to ourselves. . . . We have, in effect, been committing an act of unthinking, unilateral educational disarmament.⁸³

The report takes on a sense of foreboding as it describes the inevitable educational disaster that looms in the future and urges Americans to take action and to “do what is right for their children and for the generations to come.”⁸⁴ The report thrust education into the national spotlight as a central policy issue and effectively ended any prospect of eliminating the Department of Education.

Despite the Reagan administration’s initial push to loosen federal control over education and to cut federally funded programs, the renewed public interest in education brought on by *A Nation at Risk* spurred a reversal in the 1981 trend. The 1988 reauthorization of the ESEA was over 300 pages and included new programs, many of which had no clear relationship to the ESEA’s original purpose and some of which had no clear relationship to education. This included a rider titled “Prohibition of Dial-A-Porn,” which restricted telecommunications carriers from providing telephone access to pornographic messages. Not a single vote was cast in opposition to this amendment in the Senate. Many votes in favor of the bill undoubtedly came

⁸³ National Commission on Excellence in Education, *A Nation at Risk* (Washington, DC: Government Printing Office, 1983), http://datacenter.spps.org/uploads/SOTW_A_Nation_at_Risk_1983.pdf.

⁸⁴ Ibid.

from senators because they understood the potential political cost associated with a record of supporting pornography, not because they believed that such an amendment had any place in an education bill.⁸⁵

The 1988 act also created more federal involvement in the implementation of Title I programs. The secretary of education was charged with establishing national evaluation standards for these programs.⁸⁶ In addition, the law required states to create performance benchmarks for Title I students and identify schools not performing to these standards.⁸⁷ Several new offices and centers were created. The status of the National Center for Education Statistics was upgraded; it was given a commissioner to be appointed by the president, as well as two associate commissioners to direct the center in its enlarged role.⁸⁸

7. Approaching the Year 2000

As the 1980s ended, national education policy became more goal-oriented. George H. W. Bush was elected president in 1988, and in his first year in office, he held an education summit in Charlottesville, Virginia. The summit was attended by almost all the country's governors, including Bill Clinton of Arkansas. The policies discussed at the meeting would be the basis of education reform for the next 10 years. The primary outcome of the summit was a list of national education goals, which would eventually make their way into Bush's "America 2000: Excellence in Education" bill. Although that bill was never passed, it was the immediate forerunner of a similarly named Clinton bill, "Goals 2000: Educate America," which passed in 1994.

⁸⁵ Cross, *Political Education*, 88.

⁸⁶ Library of Congress, Bill Summary and Status, H.R.5, accessed June 25, 2014, <http://thomas.loc.gov/cgi-bin/bdquery/z?d100:HR00005>.

⁸⁷ Cross, *Political Education*, 88.

⁸⁸ Library of Congress, Bill Summary and Status, H.R.5.

The goals listed in the 1994 bill, which had stemmed from that original meeting five years earlier, set the year 2000 as a deadline. The goals included a nationwide 90 percent graduation rate, a 100 percent adult literacy rate, schools free of drugs and violence, and the United States as the world leader in math and science performance. They also included ambiguous goals, such as “All children in American will start school ready to learn.”⁸⁹ Each goal was followed by a list of specific objectives, giving further detail about what was expected by the 2000 deadline. In striving toward these goals, the legislation promised to promote “coherent, nationwide, systemic reform.” It edged closer toward nationwide standards by encouraging the adoption of “voluntary national content standards” and “voluntary national student performance standards.” The standards would be certified by the National Education Standards and Improvement Council, which was established by the bill, along with the National Education Goals Panel.⁹⁰

The Goals 2000 bill marked the beginning of a new period of goal-related education policy. Table 2 summarizes the key events that would take place during the following two decades. A new authorization of the ESEA was also passed during the Clinton administration, as the Improving America’s Schools Act (IASA) of 1994. The act was closely related to Goals 2000 and tied states’ receipt of federal money to the requirement that they adopt standards consistent with the national goal list.⁹¹ The IASA also required states to define “adequate yearly progress” for schools receiving Title I funds, a requirement that would play a major part in President George W. Bush’s No Child Left Behind legislation several years later. Both the IASA and

⁸⁹ Pub. L. No. 103-227 (1994), 130–131.

⁹⁰ Pub. L. No.103-227 (1994).

⁹¹ McCluskey, *Feds in the Classroom*, 62.

Goals 2000 would set the stage for the turn of the century and the most significant piece of federal education legislation since the ESEA was first enacted in 1965.

Table 2. Key Events in National Standards Education Policy, 1989–present

GEORGE H. W. BUSH PRESIDENCY
<ul style="list-style-type: none"> • Charlottesville Education Summit (Sept. 1989): Bush meets with the nation’s governors to begin creating a list of national education goals. • America 2000 (April 1991): Legislation based on the national goals is announced under Bush and Secretary of Education Lamar Alexander. The bill is not passed, but becomes the template for Goals 2000.
CLINTON PRESIDENCY
<ul style="list-style-type: none"> • Goals 2000 (March 1994): Clinton’s bill, based on America 2000, is passed. The bill encourages nationwide content and achievement standards. It also establishes the National Education Standards and Improvement Council and the National Education Goals Panel. • Improving America’s Schools Act (Oct. 1994): The Elementary and Secondary Education Act is reauthorized under Clinton. The legislation requires states to adopt standards consistent with Goals 2000 to receive federal education funds. It also requires schools receiving Title I funding to define “adequate yearly progress” for students. • 1996 National Education Summit (March 1996): A group of governors meets to discuss national achievement standards. They establish Achieve Inc., an education reform group that is eventually charged with writing nationwide standards under Common Core.
GEORGE W. BUSH PRESIDENCY
<ul style="list-style-type: none"> • No Child Left Behind (NCLB, Jan. 2002): The Elementary and Secondary Education Act is reauthorized as NCLB. The new law creates student and teacher accountability targets, requires math and reading testing for third through eighth grade students, requires all schools and districts to meet adequate yearly progress targets, and establishes sanctions for failing schools.
OBAMA PRESIDENCY
<ul style="list-style-type: none"> • Common Core State Standards Initiative (CCSSI, April 2009): The CCSSI is established at a meeting of the National Governors Association and the Council of Chief State School Officers. Participants agree to create a set of math and reading standards, including detailed grade-level standards. Achieve Inc. is tasked with drafting the standards. • Race to the Top (RTTT, July 2009): President Barack Obama and Secretary of Education Arne Duncan announce RTTT as part of the 2009 stimulus package. States compete for the \$4.35 billion offered by the program and are incentivized to adopt common standards and assessment measures. • Common Core Standards Announced (June 2010): The National Governors Association and the Council of Chief State School Officers announce the Common Core State Standards. In the following months, many states vote to adopt the standards. • NCLB Waivers (Aug. 2011): Duncan announces that states adopting math and reading “college- and career-ready” standards may be eligible to receive waivers exempting them from NCLB standards. • RTTT Technical Review Board (March 2013): The Department of Education creates a technical review board to provide oversight to the two organizations creating assessment systems for RTTT.

8. No Child Left Behind

On January 8, 2002, George W. Bush approved the latest reauthorization of the ESEA by signing Public Law No. 107-110, the No Child Left Behind Act of 2001. This moved the country into a new stage of federal involvement in local education. The law's stated purpose was "to close the achievement gap with accountability, flexibility, and choice, so that no child is left behind."⁹²

These principles of accountability, flexibility, and choice—along with a focus on research-based methods—were the core components of Bush's plan, which he had announced in its original version a year earlier, just days after his inauguration. After almost a year of deliberation, members of the House and the Senate reached agreement, and passed the most comprehensive education legislation since the ESEA.⁹³

The law's emphasis on accountability allowed for heightened federal oversight of student performance on state exams. Proponents of the bill cited low achievement on National Assessment of Educational Progress (NAEP) exams—particularly in schools with high levels of poverty—as evidence that higher levels of federal accountability were needed to ensure widespread student success across states.⁹⁴ In a speech at Hamilton High School in Ohio before signing the law, Bush explained, "The fundamental principle of this bill is that every child can learn, we expect every child to learn, and [states] must show us that every child is learning."⁹⁵

The new accountability regulations targeted both students and teachers. The law required states to implement statewide accountability programs that included annual math and reading

⁹² Pub. L. No. 107-110 (2002).

⁹³ Cross, *Political Education*, 127.

⁹⁴ US Department of Education, Office of Elementary and Secondary Education, *No Child Left Behind: A Desktop Reference* (Washington, DC: US Department of Education, 2002), 13.

⁹⁵ White House, "President Signs Landmark No Child Left Behind Education Bill," 2002, <http://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020108-1.html>.

testing for all public school students in third through eighth grade.⁹⁶ School performance would be measured by adequate yearly progress (AYP), a term that quickly made its way into the everyday vocabulary of teachers and administrators around the country. While states were allowed to develop their own exams, measures of proficiency, and target goals for AYP, the law required that each school and district meet those targets and that the results be recorded on state and local “report cards.”⁹⁷

In addition to each school’s verification that its overall performance was consistent with AYP, schools were also expected to break down achievement measures into student subgroups.⁹⁸ Specifically, the law required “results to be disaggregated within each State, local education agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities . . . , and by economically disadvantaged students.”⁹⁹ The goal as outlined in the act was that all groups of students should become proficient in reading and math achievement within 12 years. States were to create specific plans with intermediate annual objectives in order to realize proficiency for all student groups before the deadline.¹⁰⁰

The legislation not only required the creation of target goals for each state, it also established punitive action for schools and districts that did not meet those goals. Table 3 summarizes these sanctions. No action was required by federal legislation the first year a school failed to meet AYP. States typically placed schools on a “watch list” to try to ensure that they met the target goals the following year. If a school failed to meet AYP in the second year, it was

⁹⁶ School and district adequate yearly progress targets were initially related to only math and reading exams, but NCLB required that science achievement be assessed by 2007–2008. Testing was also required once between the 10th and 12th grades.

⁹⁷ US Department of Education, *No Child Left Behind*, 13–17.

⁹⁸ *Ibid.*

⁹⁹ Pub. L. No. 107-110 (2002).

¹⁰⁰ US Department of Education, *No Child Left Behind*, 17.

listed as being “in need of improvement.” Low-income students in these schools were given the option of transferring to a different public school that *did* meet its AYP targets. In addition, schools on this list were required to use 10 percent of their Title I LEA grant money for professional development designed to address their academic shortcomings. After a third year of failure to meet AYP, schools were required to provide “supplemental educational services” to low-income students. States were required to keep and monitor a list of public and private service providers, and parents were to be given a choice among providers.¹⁰¹

Table 3. No Child Left Behind Sanctions for Schools and Districts Failing to Meet Adequate Yearly Progress Requirements

Year	Action required by No Child Left Behind
1st year	No action required
2nd year	School listed as “in need of improvement” Optional transfer for low-income students Required professional development
3rd year	Provision of “supplemental educational services” for low-income students
4th year	School listed as requiring “corrective action” Increased district oversight at corrective action schools Increased state oversight in corrective action districts
5th year	School restructuring

Source: US Department of Education, Office of Elementary and Secondary Education, *No Child Left Behind: A Desktop Reference* (Washington, DC: US Department of Education, 2002), 13.

If a school failed to improve in its fourth year and again missed AYP, the law specified that it be listed as requiring “corrective action.” Corrective action schools were in danger of losing much of their existing autonomy to school district personnel. Potential sanctions included removal of teachers and administrators, curriculum reform, loss of administrative authority, use of external education advisors, and school reorganization. Schools in their fifth year of AYP failure were subject to complete restructuring. This could include the removal of all employees,

¹⁰¹ Ibid., 17–18.

reorganizing the school as a charter school, or transferring its operations to the state. Corrective action could also be imposed on particular districts, which were also subject to AYP targets. The law gave states the power to strip district funds, replace employees, and impose a new curriculum. In addition, it allowed for the possibility that the district could effectively go into receivership with the removal of the school board and superintendent—or even the complete abolition of the district.¹⁰²

The federal sanctions imposed by NCLB were directly related to student performance on annual exams, which were developed or chosen at the state level. However, the law also required that every state participate biennially in the NAEP exam. States were now obligated to have their fourth and eighth grade students participate in this nationwide math and reading assessment.¹⁰³ While the law did not explicitly tie state performance to funding or sanctions, it widened the path for uniform national-level testing.

All these sanctions related specifically to student performance on annual exams, but NCLB also included increased federal requirements for teachers. Under the new law, Title I teachers were required to be “highly qualified,” which meant that they had earned a four-year degree, were state-certified, and had “demonstrated competence” in their teaching subjects. Paraprofessionals were required to have a two-year degree and were prohibited from working outside direct teacher supervision.¹⁰⁴

The ostensible goal of NCLB was that teachers, schools, and states would be held to accountability standards, and that these new federal standards would help them become more effective at improving students’ learning experience. Schools and states responded to

¹⁰² Ibid., 18.

¹⁰³ Ibid., 21.

¹⁰⁴ Ibid., 19.

incentives—but not always in the intended way. To meet the new proficiency requirements, some states created double standards for their definitions of “proficiency”—a higher standard for their state-level assessments and a new, lower standard for federal assessments. Louisiana, Colorado, and Connecticut created new federal-level benchmarks for student success.¹⁰⁵ Other states simply redefined what it means to be proficient by lowering their state standards.

Before NCLB, the education system in Michigan was known for its high proficiency requirements in measuring student success. But the consequence of setting the standards high is that, under NCLB, a higher percentage of schools were categorized as failing. Faced with the possibility of being punished for setting high expectations for achievement, Michigan simply redefined those expectations and lowered the required passing score on its state exams.¹⁰⁶

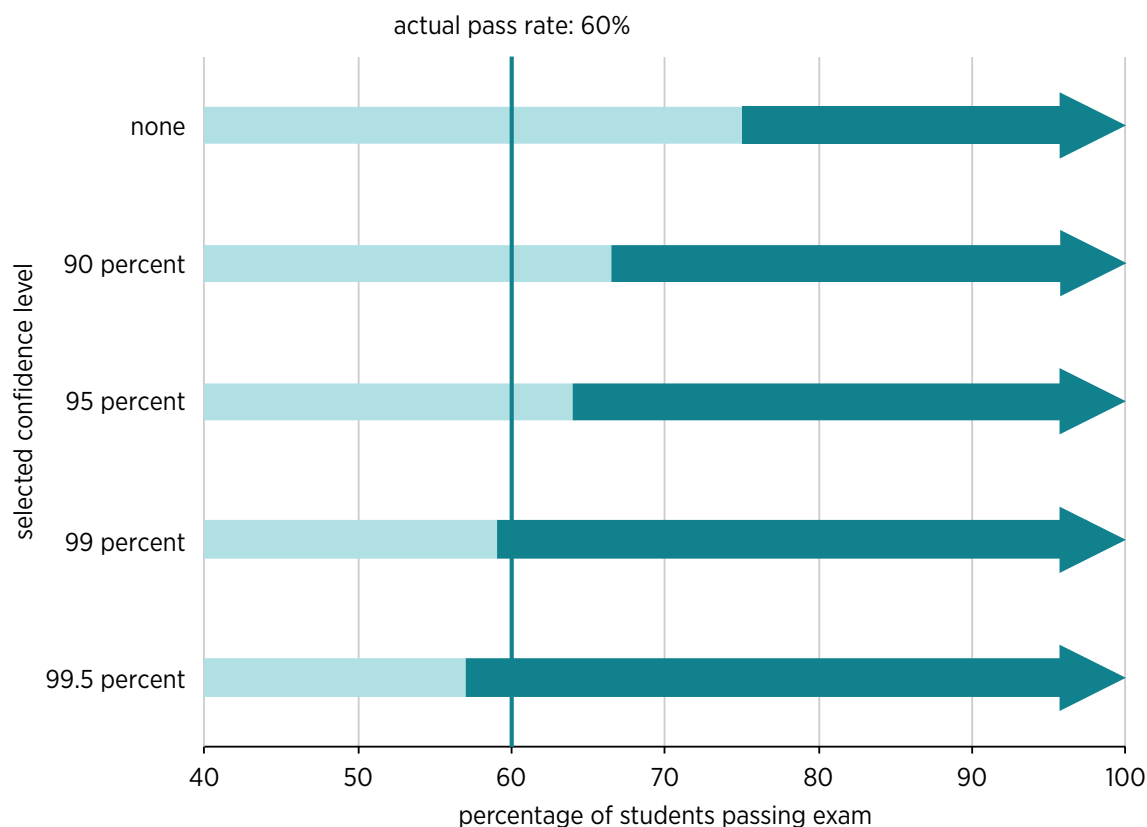
Other states took more subtle approaches to working around the system, including changing the confidence intervals for statistics that reported the percentage of students achieving proficiency. Using confidence intervals in reporting statistics allows schools some leeway in how close their proficiency levels are to the minimum targets. They are typically meant to keep small schools from missing the cutoff because that their pass rates are calculated using a very low number of students. For example, if the minimum proficiency target for students passing the state exam is 75 percent, a school with a pass rate of 74 percent is very close but just barely misses the cutoff. Placing confidence intervals around schools’ pass percentages allows schools with percentages very close to the threshold to be classified as successfully attaining it. The calculation of a confidence interval requires a choice of confidence level—typically between 90 and 95 percent. As the reported confidence level increases, the confidence interval widens by

¹⁰⁵ Lawrence A. Uzzell, “No Child Left Behind: The Dangers of Centralized Education Policy,” *Policy Analysis* 544 (May 2005): 12.

¹⁰⁶ *Ibid.*, 12.

default, allowing schools with lower and lower pass rates to “meet” the minimum target. The window of allowable scores becomes especially wide for small schools.

Figure 8. Example of the Effect of Confidence Intervals on Minimum Pass Rates, Stated Pass Threshold: 75 Percent



Note: The darker arrows represent scores that would qualify the school as meeting the 75 percent threshold. As the selected confidence level increases, the confidence interval widens and the minimum pass rate decreases. Minimum pass rates in this example are calculated based on a school of 50 students, a stated pass threshold of 75 percent, and one-sided confidence intervals.

Figure 8 shows a visual example of this relationship. Assume that in a school of 50 students, 60 percent pass the state exam. Without the use of confidence intervals, this school would not exceed the required 75 percent threshold; only schools with an actual pass rate of 75 percent would meet it. Using confidence intervals, however, reduces the acceptable pass rate and makes it more likely that the school will be classified as “acceptable.” At a 90 percent

confidence level, the school would need a pass rate of about 66.5 percent to meet the goal, which still drops the actual target by a substantial amount. However, if the state reported its statistics using a 99 percent confidence level, the school would automatically qualify as achieving the goal, even though the actual test scores of its students had not changed at all. In fact, under a 99.5 percent confidence level, schools with actual pass rates as low as 57 percent would qualify.

Given this, the choice of an extremely high confidence level can help a school meet a certain target. Wisconsin, Kentucky, Tennessee, North Carolina, and Pennsylvania changed their confidence levels in the wake of NCLB, widening the range of proficiency requirements and making it substantially easier for schools to reach the required goals.¹⁰⁷ Kentucky increased its confidence level to 99.5 percent, which created proficiency target windows that were so wide they were almost meaningless for some schools. Richard Innes, a researcher at the Bluegrass Institute in Kentucky, says that with confidence intervals that wide, schools “are guaranteed to meet that standard,” calling the system “a con game.”¹⁰⁸

9. The Next Phase in Federal Oversight: Race to the Top and Common Core

Despite serious doubt from policy analysts that NCLB and the federal regulations that accompanied it were effective, federal oversight continued to grow and reached new heights with the advent of Common Core and Race to the Top. The Common Core State Standards Initiative (CCSSI) “establish[es] a single set of clear educational standards for kindergarten through 12th grade”¹⁰⁹ across states. The initiative began in April 2009, when representatives from the National Governors Association and the Council of Chief State School Officers met to discuss

¹⁰⁷ McCluskey, *Feds in the Classroom*, 94.

¹⁰⁸ Uzzell, “No Child Left Behind,” 12.

¹⁰⁹ “Frequently Asked Questions,” Common Core State Standards Initiative, accessed January 10, 2014, <http://www.corestandards.org/resources/frequently-asked-questions>.

the creation and adoption of national education standards. The end result of the meeting was an agreement to draft a set of reading and mathematics standards within the next several months and to have more detailed grade-level standards completed by that December.¹¹⁰

A nonprofit organization called Achieve, which had been established in 1996 by a group of governors in the wake of Goals 2000, was charged with writing the standards. Having the standards drafted by Achieve allowed proponents of a national standards system to bypass the legislative process. This also provided the opportunity for discussions relating to the creation of the standards to be held confidentially.¹¹¹

The standards were reviewed by a 29-member Validation Committee, which was comprised primarily of education professors and researchers at education institutes, as well as several teachers and principals. The role of the committee was to examine the development process of the standards, as well as the final standards themselves.¹¹² However, after the standards had been completed and reviewed, not all members of the committee agreed to sign off on them. James Milgram, the only mathematician on the committee,¹¹³ refused to validate the mathematics standards after reviewing them.¹¹⁴ Similarly, Sandra Stotsky, the only K–12 English language arts (ELA) expert,¹¹⁵ would not sign the final version of the ELA standards.¹¹⁶ In a summary of Common Core and their experience on the Validation Committee, Milgram and

¹¹⁰ William J. Mathis, *The “Common Core” Standards Initiative: An Effective Reform Tool?* (East Lansing, MI: Great Lakes Center for Education and Research Practice, 2010), 5.

¹¹¹ Lindsey Burke and Joy Pullman, “Reclaiming Education Freedom: The Fight to Stop Common National Standards and Tests,” Conservative Women’s Network and Clare Booth Luce Policy Institute, June 21, 2013, <http://www.heritage.org/events/2013/06/cwn-common-core>.

¹¹² “Common Core State Standards Initiative Validation Committee Announced,” National Governors Association, September 24, 2009, http://www.nga.org/cms/home/news-room/news-releases/page_2009/col2-content/main-content-list/title_common-core-state-standards-initiative-validation-committee-announced.html.

¹¹³ R. James Milgram and Sandra Stotsky, “Can This Country Survive Common Core’s College Readiness Level?,” September 2013, p. 2, <ftp://math.stanford.edu/pub/papers/milgram/ZimbaMilgramStotskyFinal.pdf>.

¹¹⁴ R. James Milgram, “Review of Final Draft Core Standards,” accessed January 10, 2014, p. 1, <ftp://math.stanford.edu/pub/papers/milgram/final-report-for-validation-committee.pdf>.

¹¹⁵ Milgram and Stotsky, “Can This Country Survive,” 2.

¹¹⁶ See *ibid.*, 4.

Stotsky not only explain their criticism of the standards, they also raise questions about the process of developing the standards in the first place. They explain that all committee members were required to sign a confidentiality agreement, stating that they would “maintain the deliberations, discussions, and work of the Validation Committee, including the content of any draft or final documents, on a strictly confidential basis” and that they would not “disclose or communicate any information” related to the committee meetings.¹¹⁷

The complete draft of the standards themselves, which is nearly 650 pages long,¹¹⁸ defines “the knowledge and skills students should have within their K–12 education careers so that they will graduate high school fully prepared for college and careers.”¹¹⁹ The creators emphasize that the standards are “clear, understandable and consistent,” “research-based,” “internationally benchmarked,” and that they “include rigorous content and application of knowledge through high-order skills.”¹²⁰

Although they do not mandate the method of instruction to be used, the standards direct what content is to be learned by students in each grade. The ELA standards provide a strong emphasis on informational texts. This aligns classroom content with the NAEP assessment, which specifies that by 12th grade, 70 percent of ELA material should be informational, as compared to literary.¹²¹ The standards provide a lengthy appendix of recommended readings or

¹¹⁷ Ibid., 2.

¹¹⁸ “Read the Standards,” Common Core State Standards Initiative, June 2, 2010, <http://www.corestandards.org/read-the-standards/>.

¹¹⁹ Council of Chief State School Officers, “National Governors Association and State Education Chiefs Launch Common State Academic Standards,” press release, June 2, 2010, http://www.ccsso.org/News_and_Events/Press_Releases/NATIONAL_GOVERNORS_ASSOCIATION_AND_STATE_EDUCATION_CHIEFS_LAUNCH_COMMON_STATE_ACADEMIC_STANDARDS_.html.

¹²⁰ Ibid.

¹²¹ “Common Core State Standards for English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects,” Common Core State Standards Initiative, June 2, 2010, p. 5, http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf. The document provides a “distribution of literary and informational passages” by grade for the NAEP, which shows a literary/informational breakdown of 50/50, 45/55, and 30/70 for grades 4, 8, and 12, respectively. Common Core standards are aligned to reflect this breakdown.

“text exemplars” for each grade, which includes selections such as an Environmental Protection Agency bulletin titled *Recommended Levels of Insulation* and *Executive Order 13423: Strengthening Federal Environmental, Energy, and Transportation Management*, a publication from the US General Services Administration.¹²²

Common Core is touted by its advocates as being a completely voluntary program steered by a consortium of states. The CCSSI website states,

The Common Core State Standards Initiative is a state-led effort that [establishes standards] that states voluntarily adopt. . . . The federal government had no role in the development of the Common Core State Standards and will not have a role in their implementation. The Common Core State Standards Initiative is a state-led effort that is not part of No Child Left Behind and adoption of the standards is in no way mandatory.¹²³

The implication is that Common Core is completely independent of any federal involvement and any federal legislation. In reality, the federal government was very much involved with Common Core—both in pressuring states to adopt the standards through legislation and in reviewing the standards themselves.

At the same time the Common Core standards were being written, Barack Obama was nearing the end of his first year as president and announcing the next phase in federal involvement in education policy. The stimulus package passed early in 2009 included almost \$80 billion for elementary and secondary education.¹²⁴ Included in the total was \$4.35 billion tagged for a program called Race to the Top (RTTT).¹²⁵ At a speech to students and teachers at James C. Wright Middle School in Madison, Wisconsin, that November, Obama acclaimed the size of the

¹²² “Common Core State Standards for English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects Appendix B,” Common Core State Standards Initiative, June 2, 2010, http://www.corestandards.org/assets/Appendix_B.pdf.

¹²³ “Frequently Asked Questions,” Common Core State Standards Initiative, accessed January 10, 2014, <http://www.corestandards.org/resources/frequently-asked-questions>.

¹²⁴ “Budget History Tables.”

¹²⁵ “Race to the Top Program Executive Summary,” US Department of Education, November 2009, p. 2, <http://www2.ed.gov/programs/racetothetop/executive-summary.pdf>.

appropriation, calling it “one of the largest investments that the federal government has ever made in education reform.”¹²⁶ He then explained his plan, emphasizing its importance by declaring, “It’s time to make education America’s national mission.”¹²⁷ The statement seemed to stand in stark contrast to the Tenth Amendment and the decentralization inherent in the roots of the US education system; however, when compared to more recent policies, its implications did not seem so drastic.

RTTT was billed not as a mandate, but as an optional competition. However, the \$4.35 billion associated with the program represented the ultimate federal carrot dangled in front of state education officials. The program allowed states to submit applications describing their plans for comprehensive and systemic reform in four key areas: (1) standards and assessments, (2) data collection, (3) teacher recruitment and retention, and (4) improvement of low-achieving schools. States whose plans were approved would receive federal grants to be used to implement their proposed reforms. States’ applications were assessed on a point system, with specific points awarded for addressing specific targets related to the four key reform areas.¹²⁸

Under standards and assessments, states were awarded points for adopting “a common set of high-quality standards” and for joining “a consortium of states” that was prepared to adopt those standards.¹²⁹ Without explicitly using the phrase “Common Core,” this provision of RTTT pointed directly at the Common Core Standards Initiative and the group of states that had adopted them. Points also were awarded for adopting common assessment measures. This would pave the way for states to adopt assessments created by the Partnership for Assessment of

¹²⁶ White House, “Remarks by the President on Strengthening America’s Education System,” November 4, 2009, <http://www.whitehouse.gov/the-press-office/remarks-president-strengthening-americas-education-system>.

¹²⁷ White House, “Remarks by the President.”

¹²⁸ “Race to the Top Program Executive Summary,” 2.

¹²⁹ *Ibid.*, 7.

Readiness for College and Careers and the Smarter Balanced Assessment Consortium, the two assessment groups associated with Common Core.

The data collection targets included creating statewide longitudinal systems in which individual student progress could be tracked across time, providing public access to the data (with confidential identifying information removed), and using it to enhance classroom instruction. The teacher recruitment and retention goals included broadening the scope of alternative certification options by changing state regulations that previously required traditional certification, tying various measures of student performance to teacher and principal evaluation, state assurance of “equitable distribution of teachers and principals” with respect to schools with high levels of poverty or minority students, and provision of data-driven professional development. The final core area, improvement of low-achieving schools, awarded points for the existence of state laws and regulations that would allow a state to directly intervene in local schools or districts that were categorized as low-performing.¹³⁰ In addition to these point-based assessments, states seeking Race to the Top funds were also required to remove any state laws or regulations that prohibited tying teacher evaluations to student performance.¹³¹

Applications were also evaluated based on several priority areas. The highest priority requirement was that a state’s application had to address reform in the four key areas listed above and that it had to show “sufficient LEA participation and commitment to successfully implement and achieve the goals in its plans.”¹³² The other priority areas included a focus on science, technology, engineering, and math learning; strategies for improved preschool programs; the adoption of longitudinal data programs that would allow student progress to be tracked across

¹³⁰ Ibid., 8–10.

¹³¹ Ibid., 4.

¹³² Ibid.

time; an emphasis on smoothing student transitions from one level of education to the next; and increased flexibility for LEAs.¹³³

Forty states plus the District of Columbia applied for RTTT awards in its first phase, with six additional states to follow in later phases of the program.¹³⁴ In the first phase, Tennessee and Delaware won \$500 million and \$100 million, respectively.¹³⁵ Later, 17 additional states won awards ranging from \$17 million to \$700 million.¹³⁶

Without explicitly requiring states to use uniform standards and assessments, the RTTT pushed them toward adopting Common Core with the obvious motivator of \$4.35 billion offered as a prize for successful applicants. The other strong incentive the government offered was a waiver for compliance with No Child Left Behind. In 2011, Secretary of Education Arne Duncan announced the opportunity for states to apply for NCLB waivers, provided that the states met several conditions.¹³⁷ One of these conditions is that a state “must demonstrate that it has college- and career-ready expectations for all students in the State by adopting college- and career-ready standards in at least reading/language arts and mathematics.”¹³⁸ While the requirement does not explicitly use the phrase “Common Core,” it

¹³³ Ibid., 4–5.

¹³⁴ “Race to the Top Results Phase 1 Final Results,” US Department of Education, last modified February 15, 2012, <http://www2.ed.gov/programs/racetothetop/phase1-applications/score-summary.pdf>; “Race to the Top Results Phase 2 Final Results,” US Department of Education, last modified February 15, 2012, <http://www2.ed.gov/programs/racetothetop/phase2-applications/summary.pdf>; “Race to the Top Results Phase 3 Final Results,” US Department of Education, last modified May 22, 2012, <http://www2.ed.gov/programs/racetothetop/phase3-applications/index.html>. Maine, Maryland, Mississippi, Montana, Nevada, and Washington did not submit applications in the first round but applied in later rounds. Alaska, North Dakota, Texas, and Vermont opted not to apply in any round.

¹³⁵ “Delaware and Tennessee Win First Race to the Top Grants,” US Department of Education, March 29, 2010, <http://www2.ed.gov/news/pressreleases/2010/03/03292010.html>.

¹³⁶ “Nine States and the District of Columbia Win Second Round Race to the Top Grants,” US Department of Education, August 24, 2010, <http://www.ed.gov/news/press-releases/nine-states-and-district-columbia-win-second-round-race-top-grants>. “Race to the Top Fund: Awards,” US Department of Education, last modified March 18, 2013, <http://www2.ed.gov/programs/racetothetop/awards.html>.

¹³⁷ “Letters from the Education Secretary or Deputy Secretary,” US Department of Education, September 23, 2011, <http://www2.ed.gov/policy/gen/guid/secletter/110923.html>.

¹³⁸ “ESEA Flexibility Policy Document,” US Department of Education, June 7, 2012, <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.

describes the Common Core development process, stating, “Governors and Chief State School Officers have developed and adopted rigorous academic content standards to prepare all students for success in college and careers in the 21st century.” The possibility of release from NCLB is a powerful incentive; to date, 45 states and the District of Columbia have applied for waivers, and the vast majority of the states have adopted Common Core and its related assessments.

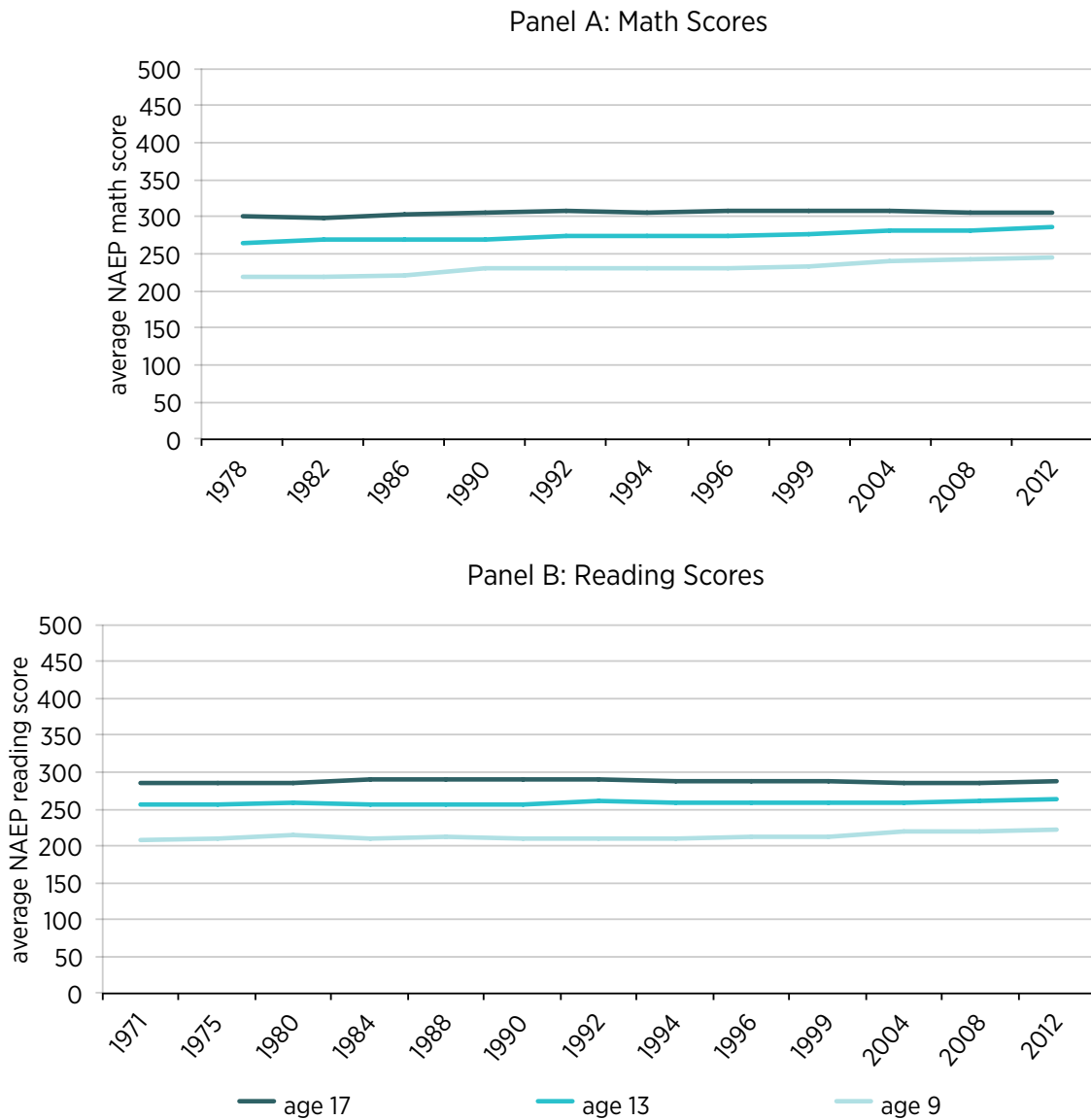
The federal government is also involved in reviewing the Common Core standards themselves. In 2013, the Department of Education established a RTTT Assessment Technical Review Board “as part of the Department’s continuing work to support the two consortia of states developing next generation assessment systems, the Partnership for Assessment of Readiness for College and Careers (PARCC) and the Smarter Balanced Assessment Consortium.” The purpose of the technical review board was to examine the assessments being developed by PARCC and Smarter Balanced as part of the Department of Education’s efforts to “provide oversight of their work.”¹³⁹ The board examined each area of the assessments; provided comments, criticism, and requests for changes; and asked each consortium to respond and “[identify] actions that will strengthen its work.”¹⁴⁰ The board provides a clear channel of influence for the Department of Education into Common Core, despite the fact that CCSI emphasizes that the standards are developed and implemented independently of federal sources.¹⁴¹

¹³⁹ “Race to the Top Assessment Program,” US Department of Education, March 2013, <http://www2.ed.gov/programs/racetothetop-assessment/performance.html>.

¹⁴⁰ Ibid.

¹⁴¹ “Frequently Asked Questions,” Common Core State Standards Initiative, accessed January 10, 2014, <http://www.corestandards.org/resources/frequently-asked-questions>.

Figure 9. US National Assessment of Educational Progress (NAEP) Scores, 1971–2012



Source: “NAEP Long-Term Trend Assessments,” National Center for Education Statistics, last modified July 9, 2013, <http://nces.ed.gov/nationsreportcard/ltt/>.

Note: Long-term trends in math scores are available from 1978.

10. Conclusion

Federal influence over the education system in the United States has multiplied in the half-century since President Lyndon Johnson signed the ESEA into law. The structure of the American education system is now markedly different from the system that was once

distinguished for its level of decentralization, for its lack of federally imposed standards and curricula, and for its emphasis on state-level decision making. Once set aside as a responsibility for the states, control over education decisions has slowly been removed from state and local policymakers and entrusted to the federal government.

That decentralized quality has faded across time as legislation grew in size and in scope. The empirical trends are clear: with the thousands of pages of legislation that have been passed since the ESEA was first signed in 1965 have come huge increases in federal spending, an explosion of federal programs, and a surge in the regulatory burden imposed on local schools. The almost five decades that succeeded the ESEA's enactment saw a multiplication in the bureaucracy of the Department of Education and an expansion in authority to go along with it. There are more requirements related to federally funded programs and more mandates related to student assessment and teacher quality. Together, these changes have meant more federal control over decisions that were once left to states and local districts.

A natural question, then, is, "What has been gained?" There is no doubt that the costs of these changes in education policy have been enormous, but if they have been accompanied by significant growth in student performance and outcomes, then an argument could be made in their favor. While a careful causal analysis of the efficacy of education spending is beyond the scope of this paper, a cursory examination of test scores over the past few decades may be telling.¹⁴² Figure 9 shows NAEP scores in math and reading from 1971 to 2012,¹⁴³ which shows almost zero change in performance across time. There is a slight increase in performance for 9-year-old and 13-year-old math scores across the time range, but 17-year-old performance reveals

¹⁴² Numerous variables, such as state and local education policies and nationwide student dropout rates, have changed since the 1970s and have almost certainly impacted student achievement. The figures here are presented as descriptive rather than causal.

¹⁴³ Long-term trends in math scores are available from 1978.

a small but statistically significant decrease between 1978 and 2012. Reading scores show a similar slight performance increase for 9- and 13-year-olds but no significant change for 17-year-olds. While no causal conclusions can be drawn from these figures alone, they stand in contrast to the steep increases in federal spending and programs that have accompanied them.

Recent trends in federal education policy suggest that these patterns will continue and perhaps intensify over the following years. The federal government's pursuit of its current education agenda with Race to the Top and Common Core will likely result in tighter control over the material taught in local classrooms, the way that students are assessed, and the level of autonomy that teachers have in shaping their own curricula. Over time, what should have been a guiding principle in the original ESEA legislation has been relegated to a discarded footnote:

Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system.¹⁴⁴

¹⁴⁴ Pub. L. No. 89-10 (1965).