

April 23, 1979  
(Revised from September 29, 1978)

## ***THE DEPARTMENT OF EDUCATION***

### STATUS

On January 24, 1979, Senator Abraham Ribicoff (D-Conn.), chairman of the Committee on Governmental Affairs, introduced S.210, a bill providing for a cabinet-level Department of Education. The committee held three days of hearings, February 6-8, and voted 9-1 to report the bill on March 14. The Senate took up consideration of S.210 on April 5, at which time Senator Jesse Helms (R-N.C.) succeeded in persuading the Senate to attach an amendment removing the jurisdiction of the Supreme Court over the issue of voluntary prayer in school. But on April 9 sponsors of the bill got a vote of reconsideration and then managed to reverse the original vote and remove the amendment from the bill. The Senate broke for Easter recess with the bill still under consideration on the floor. When action is resumed, Senator Daniel P. Moynihan (D-N.Y.) plans to introduce major amendments calling for the inclusion of all federal education programs in the new department. S. 210 as reported essentially proposes to upgrade HEW's Office of Education to cabinet-level status but omits numerous education programs scattered throughout the executive branch.

In the House, Congressman Jack Brooks (D-Tex.), chairman of the Committee on Government Operations, introduced H.R. 2444, a companion bill to S. 210, on February 27, 1979. Hearings have been completed and the full committee expects to markup the bill soon after the completion of the Easter recess. The vote in committee is expected to be close.

In the 95th Congress, a bill creating a Department of Education passed the Senate by a 72-11 vote but did not receive floor consideration in the House because of the legislative logjam before adjournment.

## BACKGROUND -- THE GROWTH OF THE FEDERAL ROLE IN EDUCATION

Early American schools were organized at the community level, almost always in conjunction with local churches, and placed under the direction of popularly elected school boards. The founding fathers thought it best to keep education in state and community hands; they said nothing about it in the Constitution, even though they prized it highly.

The first federal education law was the Land Ordinance Act of 1785 which authorized the sale of the enormous public domain and prescribed that one thirty-sixth of that land, or the proceeds from the sale thereof, be set aside for educational purposes. It became the forerunner of the public school systems of the United States. Not for seventy-five years did the Congress again involve itself in education when, in 1862, the first of two Morrill Acts established the land grant college system for the encouragement of the agricultural and mechanic arts. The federal role under the Morrill Acts was in the form of land grants and modest annual payments with few strings attached. In 1867, the federal government created a non-cabinet Department of Education, which was quickly downgraded and renamed the Bureau of Education and much later the Office of Education, to collect statistics and periodically report on the condition of education, a function that was performed quietly and modestly for the next hundred years. In 1917, under the pressure of World War I, the Smith-Hughes Act established a system of support of vocational education in secondary schools. The Smith-Hughes Act was a departure from tradition in that it specified programs of education for particular groups of people. Prior aid had been general, handed out with the idea of fostering local initiative and self-government.

The New Deal set the stage for a transformation in federal policy and a fundamental change in public attitudes toward the federal role with respect to numerous functions that had theretofore been considered exclusively state, local, or private. In 1940, Congress passed the Lanham Act which established the principle of special federal aid to school districts unable to raise sufficient local revenue because of large federal landholdings or sudden influxes of federal employees' children. This Act remains to this day immensely popular, in part because it authorizes funds for almost 4,000 U.S. school districts with few restrictions on how money is used, unlike almost all federal education acts which have followed it.

In 1944, anticipating the end of World War II, Congress passed the Serviceman's Readjustment Act, better known as the G.I. Bill. This gave a substantial boost to higher education. Money under the Act could be applied to any private college as well as any public college, and even to a religious seminary. It is only in recent years that the federal government has begun to use what was originally an unqualified grant to each serviceman as a means of forcing federal education regulation on individual schools. (New inductees are no longer eligible for G.I. Bill benefits.)

The federal government's next major step into education was taken in 1958 with passage of the National Defense Education Act. This legislation followed in the wake of public reaction to the 1957 launching of Sputnik, the Soviet space success that caught the American public by surprise. The NDEA authorized federal funds for a wide variety of educational activities, most of them in mathematics and the sciences.

The NDEA opened the door for a substantial increase in the federal educational role. Since its passage, Congress has approved a plethora of education legislation. The Economic Opportunity Act of 1964 authorized unusual educational programs, several bypassing conventional educational channels. The Office of Economic Opportunity was established as a separate agency within the executive branch. With its demise in 1972, all OEO programs were either terminated or transferred to other departments. For example, Headstart and Upward Bound were transferred to the Office of Education.

In 1965, the Congress passed the Elementary and Secondary Education Act (ESEA). The largest amount of federal education funds are annually appropriated under this landmark and comprehensive act. The same year also saw the passage of the Higher Education Act which established the student loan program. In 1968 came the Vocational Education Act which consolidated and extended all previously existing federal vocational education programs. The Education Amendments of 1972 and 1974 provided federal muscle for equality of opportunity in education and have been the basis for all subsequent affirmative action regulations in education. In 1975, Congress passed the Education for All Handicapped Children Act, a federal program of extraordinary breadth which authorizes funds to aid state and local school districts in the schooling of handicapped individuals from ages three to twenty-one.

This year the federal government will spend more than \$22 billion on education in over 300 different programs scattered among 40 different federal agencies. The major federal education programs are administered through the Education Division of the Department of HEW where the education division has been since the Department's creation in 1953. HEW's education division is headed by the Assistant Secretary for Education who serves as the chief federal official for formulating education policy. Under the assistant secretary is the Office of Education headed by the Commissioner of Education who oversees more than 120 separate programs involving a total annual budget in excess of \$10 billion.

Other parts of the Education Division are the National Institute of Education, the National Center for Education Statistics, the Fund for the Improvement of Postsecondary Education, and the Federal Interagency Committee on Education.

#### S. 210 AND H.R. 2444

The two bills agree that the federal government does not adequately recognize the importance of education, that there is a need to improve the quality of education, and that current federal laws and regulations are administered in an inefficient manner.

Concerning the fundamental controversy over the proposed department, namely that of control of educational policy, the House bill states that:

No provision of law relating to a program administered by the Secretary or by any other officer or agency of the executive branch of the Federal government shall be construed to authorize the Secretary or any such officer or agency to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school or school system; over any accrediting agency or association; or over the selection of library resources, textbooks, or other instructional materials by any education institution or school system, except to the extent authorized by law.

On the same subject, the Senate bill provides that it is the intention of Congress:

to protect the rights of state, local, and tribal governments and public and non-public educational institutions in the areas of educational policies and administration of programs, including but not limited to competency testing and selection of curricula and program content, and to strengthen and improve the control of such governments and institutions over their own educational programs and policies.

#### ESTABLISHMENT OF THE DEPARTMENT

H.R. 2444 provides for the creation of fourteen executive level positions, sixty-one supergrade positions with an additional fifteen supergrade positions for a three-year transitional period. S. 210 provides for thirteen executive level positions, forty-two supergrade positions and the same fifteen transitional positions, in addition

to an unlimited number of scientific, technical and professional employees.

Both bills establish the principal officers as heads of the following new offices:

- 1) the Office of the Inspector General with the duties of investigating inefficiency, fraud, and abuse in education programs;
- 2) the Office of General Counsel;
- 3) the Office of Research and Improvement Functions with the duties of research, development and dissemination of improved education and training practices;
- 4) the Office of Elementary and Secondary Education with the duties of administering programs relating to elementary and secondary education;
- 5) the Office of Post-Secondary Education, with the duties of administering programs relating to higher education;
- 6) the Office of Civil Rights with the duties of enforcing federal civil rights laws in education;
- 7) an office to administer functions relating to the education of overseas dependents of Defense Department personnel.

In addition, the bills establish these two standing committees:

- 1) the Intergovernmental Advisory Council on Education with a membership of twenty drawn from state and local officials, education and civil rights organization, and parent and student representatives.
- 2) the Interdepartmental Education Coordinating Committee with members from other federal departments and agencies. (Such a committee currently exists, although in a much more restricted scope than the Senate bill proposes.)

#### Transfer of Functions

The bills provide for the transfer of the following federal education programs to the new department:

	Personnel	FY 1979 Budget - \$
--	-----------	------------------------

From HEW

The Education Division consisting of:	4,168	12.7 bill.
I. The Office of the Assistant Secretary		
A. National Center for Education Statistics		
B. Fund for the Improvement of Post-Secondary Education		
II. The Institute of Museum Services		
III. The National Institute of Education		
IV. The Office of Education		
A. Office of the Commissioner		
B. Office of Planning		
C. Office of Management		
D. Bureau of Elementary and Secondary Education		
E. Bureau of Occupational and Adult Education		
F. Bureau of Education for the Handicapped		
G. Bureau of Post-Secondary Education		
H. Office of Indian Education		
I. Bureau of Student Financial Assistance		
The Office of Civil Rights	1,000	69 mill.
The Office of the Inspector General	117	3.5 mill.
Gallaudet College, Howard University, The American Printing House for the Blind, The National Technical Institute for the Deaf		178.8 mill.
Health Professions Student Loans	10	10 mill.
Telecommunications Demonstration Programs	1	1 mill.
Nursing Loans and Scholarship Programs	30	31.5 mill.
<u>From the Department of Defense</u>		
Schools for Overseas Dependents	9, 658	361 mill.

From the Department of Justice

The Law Enforcement Education Program

The Law Enforcement Intern Program	8	25 mill.
------------------------------------	---	----------

From the Department of HUD

The College Housing Loan Program	3	111 mill.
----------------------------------	---	-----------

From the Department of Agriculture

The USDA Graduate School		a self-supporting institution
--------------------------	--	-------------------------------

From the National Science Foundation

Selected Science Education Programs	90	58 mill.
-------------------------------------	----	----------

	<hr/>	<hr/>
	15,416	\$14.33 bill.

## THE FEDERAL ROLE IN EDUCATION

It can be seen from the foregoing that the Education Division of HEW will make up the largest part of the new Department of Education. Yet, the total federal involvement in education is much larger than those HEW programs. Even if the proposed department were created, a substantial portion of federal education programs would be omitted. As the following table indicates, federal outlays for education will total more than \$22 billion by the end of the current fiscal year.

## FEDERAL OUTLAYS FOR EDUCATION

Purpose and program	Outlays (millions)		
	1977 actual	1978 estimate	1979 estimate
Office of Education:			
Educationally deprived children.....	1,930	2,129	2,580
Support-innovation consolidation.....	173	184	209
Other elementary and secondary programs.....	249	260	242
Federally affected areas.....	765	810	781
Emergency school aid.....	241	281	305
Education for the handicapped.....	249	367	562
Occupational, vocational, adult.....	693	740	803
Basic opportunity grants.....	1,387	1,529	1,936
Other higher education student support programs.....	1,170	1,038	1,090
Other higher education.....	320	305	339
Library and instructional resources consolidation.....	104	114	147
Student loan insurance and guaranteed loans.....	130	717	722
Salaries and expenses.....	118	131	126
Other Office of Education.....	162	225	245
National Institute of Education.....	64	80	90
Special institutions.....	154	166	185
Student grants, Social Security Administration.....	1,613	1,823	2,044
Human development services.....	501	589	629
Other HEW.....	253	294	324
Other.....	597	697	772
Subtotal, programs which are primarily educational.....	10,873	12,479	14,131
Federal outlays—education support for other basic purposes:			
Health professions training.....	658	505	470
Veterans readjustment.....	3,406	2,815	2,341
Defense.....	1,111	1,127	993
Child nutrition.....	2,792	2,811	2,699
Other.....	1,324	2,078	1,747
Subtotal, education support for other purposes.....	9,291	9,336	8,250
Federal outlays—salary supplements.....	274	296	365
Total, education outlays.....	20,438	22,111	22,746
Amounts previously carried for academic research not directed toward educational objectives.....	2,724	3,081	3,354

(Source: Special Analysis J, Budget of the United States Government, Office of Management and Budget.)

Thus, in debates about the proposed new department, the following federal education programs were considered but not included in either bill:

From HEW

Educational Broadcasting Facilities Program  
The Headstart Program

From Justice

Juvenile Delinquency Programs



From Labor

Vocational Rehabilitation Services  
 Training and Youth Services

From the National Foundation on the Arts and Humanities

National Endowment for the Arts  
 National Endowment for the Humanities

From the National Science Foundation

All programs except the selected science education programs that were included.

From the Veteran's Administration

G.I. Bill Education Benefits

From Agriculture

Child Nutrition Programs  
 Education Programs of the Bureau of Indian Affairs

The Smithsonian Institution

## THE GROWTH OF THE CABINET

The proposed thirteenth department of the cabinet with a budget of \$14.33 billion would be larger than the current departments of Commerce, HUD, Interior, Justice, and State. If federal government precedence is any indication, then the department can be expected to grow in size and expenditures as soon as it is established. By way of comparison, the federal agencies that were consolidated into the Department of Energy (established into law on October 1, 1977, that is, the first day of the fiscal year 1978) spent \$5.2 billion in fiscal year 1977 and employed 18,078 civil servants. In 1978 the Department of Energy spent \$8.2 billion and employed 19,500 civil servants. Estimates (by OMB) for fiscal year 1979 indicate a budget of \$10.1 billion despite a drop in employemnt to 19,109.

The recent history of the eleven other cabinet departments shows a similar trend:

DEPARTMENT	OUTLAYS IN BILLIONS \$		FULL-TIME PERMANENT CIVILIAN EMPLOYMENT	
	1970	1978 (est.)	1970	1978*
Agriculture	8.3	22.6	116,012	84,800
Commerce	1.1	4.5	33,396	29,800
Defense	78.4	107.8	1,193,784	940,800
HEW	52.7	164.6	108,044	144,300
HUD	2.6	8.4	15,190	16,000
Interior	.99	3.9	73,361	55,700
Justice	.64	2.5	39,257	53,400
Labor	5.2	23.7	10,991	20,800
State	.45	1.2	39,753**	28,700**
Transportation	6.4	14.4	65,985	72,800
Treasury	19.5	56.7	92,521	109,700
	176.28	410.3	1,788,294	1,556,800

Source: Budget of the U.S. Government, OMB; and Statistical Abstract of the United States, Bureau of the Census.

\*Reflects the transfer of agencies when the Department of Energy was established. Also reflects other governmental reorganizations.

\*\*Includes the Agency for International Development.

## AFFIRMATIVE ACTION

Equal opportunity and affirmative action seem to be prominent concerns of both committees. Thus:

The Congress of the United States finds that there is a continuing need to ensure equality of educational opportunity.

--House report on H.R.2444

It is the purpose of this Act to establish a Department of Education in order to continue and strengthen the Federal commitment to insuring access by every individual to equal educational opportunity.

--Title I, S.210

Federal enforcement of equal opportunity and mandating of affirmative action is already the most pervasive of all the federal influences in education. In fiscal year 1978, HEW's Office of Civil Rights had a budget of \$33.3 million and a staff of 1,102. An increase of 898 employees and \$20 million in appropriations was authorized by Congress in the Supplemental Appropriations Act for 1978 that cleared Congress on February 22, 1978. For fiscal year 1979, the Office was granted another increase of \$19 million to bring the annual budget to \$72 million. This represents an increase of 1,000 percent over the \$7.2 million in expenditures of 1971, while the staff of the Office has increased 363 percent from the 550 personnel of 1971.

The Office of Civil Rights was established in 1966 to direct and coordinate the responsibilities assigned to HEW under Title VI of the Civil Rights Act of 1964 and Executive Order 11246. Since that time the Office has been delegated enforcement responsibility for the following laws:

Education Amendments of 1972 (Title IX)	sex discrimination in education
Rehabilitation Act of 1972	discrimination against the physically and mentally handicapped
Indian Self-Determination and Education Assistance Act of 1974	educational assistance to Indians
Public Health Services Act of 1972 (Sections 799A and 845)	sex discrimination in medical education
Drug Abuse Office and Treatment Act of 1972 (Section 407)	discrimination in the admission of drug addicts to hospitals
Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Section 321)	discrimination in the admission of alcoholics to hospitals

It can be seen from the above listing that the power of the Office of Civil Rights has been ever expanding since its creation in 1966. It can also be seen that all of the statutes concern education directly except the last two.

These statutes, and the federal regulations and supervision that go along with them, are used by the Office to govern virtually all actions with regard to faculty and staff -- recruitment, selection, compensation, promotion, dismissal, and pensions -- of almost all elementary, secondary, and post-secondary educational systems or institutions. In addition, the statutes have been construed to govern the construction, features, and use of buildings; the admission, advancement, and graduation of students; and the granting of financial aid. The statutes require the Office to investigate complaints, conduct periodic reviews, negotiate to secure compliance, conduct appropriate enforcement proceedings, and enforce compliance by all recipients of federal financial assistance.

In a recent study commissioned by Education Reviewer, Inc. and conducted by Roger Freeman, Senior Fellow Emeritus of the Hoover Institution, it was reported that more than half of all institutions of higher education responding had been contacted by a federal agency within the past three years with a demand to adopt, change, or abolish an operating policy or practice. HEW's Office of Civil Rights accounted for half of all contacts, followed by, in descending order of frequency, the EEOC, other HEW offices, the Department of Labor, OSHA, the Civil Rights Commission, and the Internal Revenue Service.

The cost to educational institutions of compliance with federal regulations is almost impossible to calculate. In 1976-1977, HEW ordered twelve of the country's largest school systems to transfer several thousand white teachers and principals to predominantly black schools and several thousand black teachers and principals to predominantly white schools -- or lose millions of dollars of federal funds. Under HEW regulations issued on April 28, 1977, colleges will be forced not only to admit handicapped students in order to comply with the Rehabilitation Act of 1972, but also to undertake extensive structural and equipment changes in order to insure them access. Cost estimates have ranged into the billions.

In 1975, the Office of Civil Rights reinterpreted the civil rights laws to mean that colleges will be regarded as recipients of federal funds if students receive federal financial assistance, such as federally-guaranteed student loans or grants under the G.I. Bill. Up to that time, educational institutions were regarded as recipient institutions only if they received funds directly from the federal government. In December of 1977, the Office announced the impending cutoff of federal funds from twenty-two small school districts and colleges because they had not filled out the relevant

federal forms in regards to sex discrimination. Almost all of them were not receiving federal funds at the time, but they were told that compliance was still mandatory because they would be ineligible for such aid in the future without the completed forms -- which, in effect, declares that even non-recipient institutions are subject to federal regulation because they are potential recipient institutions.

## FEDERAL INVOLVEMENT IN SCHOOL CURRICULUMS

The most persistent fear about the establishment of a Department of Education is that such a department would lead to a final federal takeover of education. As has been demonstrated above, the federal role in hiring and firing of teachers and other educational personnel, admission of students, and construction of buildings is already pervasive and can be expected to grow.

The federal role in educational research and development of curriculums has increased notably in the past decade. A number of federal programs support and control, in varying degrees, projects for developing curriculums and teaching materials. Activities to disseminate and implement federally-supported curriculum materials have accompanied this growth. These activities range from simply identifying projects' existence to packaging products and providing funds for orientation, training, and consultation to adopters.

There has been little enthusiasm for developing of new textbooks, curriculums, and methods of instruction among local school districts and states because costs may be prohibitively high and new techniques have often proved unsuccessful. So, without federal incentives, local educators have not spent money and time on educational research and development. As a consequence, almost no state and local resources have been devoted to educational research and development. The federal government has taken this role for itself.

Three federal agencies are heavily involved in educational research and development. They are:

### The National Institute of Education

Created by the Education Amendments of 1972, NIE is the most active federal agency in supporting curriculum development, teacher training, instruction techniques, equal educational opportunity, and equity financing in education. With a proposed fiscal year 1979 budget of \$100 million, NIE projects are designed to influence teachers, administrators, and decision-makers at all levels of education. By law, 90 percent of NIE's budget must be expended for research and development.

### National Science Foundation

Created in 1950, the NSF initiates and supports, through contracts and grants, basic scientific research and programs to strengthen scientific potential and science education. NSF's science education activities include supporting the development of science education materials for use by school systems at the pre-college level. The Foundation developed the "modern math" program of the 1960's which it continues to find successful even though few parents or teachers still defend it. The Foundation also developed and disseminated Man: A Course of Study (MACOS), a social science course of values education which has been the subject of wide controversy because it has been accused of undermining family values and patriotism. A sequel to MACOS, Exploring Human Nature, is now being tried out in several states. The proposed budget for FY 1979 is \$850 million.

### National Endowment for the Humanities

The Endowment was created to provide increased federal support to the humanities. Within the Endowment, the primary emphasis of the division of education programs is on projects that improve teaching and develop curriculum materials. The budget for FY 1979 will be close to \$100 million.

In addition to the activities of the above agencies, funding and support for curriculum development and dissemination and for teacher training have been carried out under the Elementary and Secondary Act of 1965 (ESEA), as amended, -- primarily under the following programs:

Title I -- education of disadvantaged children  
 Title III -- innovative education projects  
 Title VII -- bilingual education programs  
 Title VIII -- health and nutrition programs, consumer education  
 Title IX -- ethnic heritage studies

Since the Vocational Act of 1916, the federal government has been actively involved in vocational education curriculums. Such involvement is specifically mandated in the Act, as amended. In addition, federal funds go to support curriculum development in the Education of the Handicapped Act, the Right to Read Program, the Environmental Education Program, and the Indian Education Act.

### CONCLUSION

Education is America's biggest industry. Total enrollment in educational institutions at all levels, public and non-public, reached 60,726,000 in 1978 -- about 27 percent of the population.

In addition, about 5.2 million are employed by educational institutions as teachers and in various other professional and non-professional capacities. The Department of Commerce estimates that education consumed \$120.1 billion in 1975 or about 7.9 percent of the Gross National Product. In the same year, health expenditures were 8.6 percent of the GNP (\$130.4 billion), while expenditures for the national defense were 5.5 percent of the GNP (\$84 billion). Since 1949, education expenditures as percent of the GNP have increased from 3.4 to 7.9 percent (an increase of 132 percent), health expenditures have increased from 4.5 percent to 8.6 percent (an increase of 91 percent), and defense expenditures have increased from 5.1 to 5.2 percent (an increase of 2 percent).

Despite this massive nationwide commitment, education is in turmoil. Although national SAT scores appear to have leveled off this year, they had declined for fourteen consecutive years. Education consumes 37 percent of the yearly budgets of state and local governments, by far their largest annual outlay. The costs to the taxpayer for education continue to soar, despite declining enrollments. In the past several years, nationwide controversies have erupted over education policies such as court-ordered busing, textbooks, basic skills, and parental rights over the education of their children. Voters are refusing to fund current education practices by refusing to approve new school bonds. In 1966, 72.5 percent of all proposed school bond issues, with a total par value of \$2.4 billion, were approved by the voters. In 1971, the voters approved 46.7 percent of school bond issues with a total par value of \$1.4 billion. In 1976, the voters approved 50.8 percent of school bond issues but with a total par value of only \$970 million.

In recent years, control of educational institutions and educational policy has been moving ever to the center. The numbers of agencies and school board members serving at the local level has declined since 1962, while the number of staff in state education departments has more than doubled over the same period. Along with that, the number of local school districts has declined from 17,995 in 1970 to 16,376 in 1975, a drop of nine percent. The increase in federal education expenditures and regulations has risen dramatically as school bond approvals have declined and as local school districts have also declined.

The answer of the National Education Association (NEA), the Carter Administration, and congressional sponsors is to strengthen and expand the federal role. These proponents agree that a Department of Education is needed for the following reasons: 1) to give education more emphasis at the federal level, 2) to provide for more efficiency in administering federal education programs, 3) to improve federal enforcement of equal education opportunity, 4) to provide more assistance to state and local school jurisdictions in all areas of education, and 5) to promote improvement in every aspect of education.

Opponents wonder how education can receive any more nation-wide emphasis than it already has. Responding to the arguments of the proponents, they contend that such arguments imply an inevitable federal domination of education, ranging from the employment of teachers to the writing of textbooks, and that, in effect, the new department would become a national school board. Opponents also maintain that the entire notion of a Department of Education is flawed since so many of the federal education and education-related programs are not slated for inclusion in the new department. Finally, opponents worry that the education industry, faced with sharply declining enrollments, will use the muscle and visibility of the new cabinet department in order to initiate massive federal programs in the emerging education markets, examples of which are special education for the handicapped and other unique groups, career education and "lifelong learning" for adults, and child-care programs and centers.

Thomas R. Ascik  
Policy Analyst