

# WebMemo



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## Freeing Schools from Washington's Education Overreach

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Renewed interest in restoring constitutional principles has sharpened debate on a variety of policy issues. Education is no exception.

The Constitution does not provide for a federal role in education, and public schools have traditionally been under the jurisdiction of local authorities. Washington's intervention seems to have brought out the worst in education governance. It has led to ever-increasing spending and bureaucratic bloat while undermining schools' direct accountability to parents and taxpayers. Federal intervention also creates a compliance burden, sapping time and money that could be more effectively deployed to achieve educational excellence.

Congress can take steps now to set a course that will get Washington out of the way of local schools and restore constitutional governance in education.

**Background.** Washington first ventured into local school policy with the Elementary and Secondary Education Act of 1965 (ESEA). The 31-page, \$1 billion Great Society funded low-income districts in an effort to close the achievement gap between needy students and their peers. Nearly a half-century later, the gap remains, educational performance has generally stagnated, and graduation rates have not improved.

What has changed is the federal role. ESEA is the centerpiece of that role, the largest—though not the only—federal K–12 education law. ESEA has grown into a 600-page bureaucratic labyrinth known as the No Child Left Behind (NCLB) Act, with an annual price tag to taxpayers of \$25 billion. After

eight reauthorizations, the law has accumulated program after program to intervene in everything from English as a second language to after-school care.<sup>1</sup> Meanwhile, federal education spending has tripled, while student achievement has generally stagnated.<sup>2</sup>

**Federal Intervention: A Failed Half-Century Experiment.** The fundamental mismatch between the federal government's constitutional limits and its interventionist policy on education has led to perpetual expansion and overhaul of programs attempting to make federal intervention succeed where it has neither authority nor capacity.

**Proliferation of programs.** Washington's role in education has grown to the point where it is difficult to track all the federal interventions. Using a narrow definition, the Government Accountability Office (GAO) determined in 2010 that there were 151 K–12 and early childhood education programs housed in 20 federal agencies, averaging \$55.6 billion annually.<sup>3</sup>

This multiplication of programs means states and localities must complete multiple applications, monitor a steady stream of federal program notices, and comply with extensive reporting requirements.

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This increases administrative overhead and erodes coherent, school-level strategic leadership based on the needs of individual students.

**Ever-increasing spending.** Federal K–12 education spending has increased 116 percent since 1980.<sup>4</sup> In 2009, the U.S. Education Department received a one-time windfall from the Obama “stimulus” package that doubled its budget.<sup>5</sup> The Administration then called for a nearly 10 percent increase in FY 2011.<sup>6</sup> Despite this dramatic rise in spending, test scores and graduation rates have generally remained flat.<sup>7</sup>

**Expanded scope of intervention.** Federal intervention started with a narrow purpose: to provide supplemental resources to low-income students. The role gradually expanded, and in the mid-1990s laws began to focus on leveraging system-wide reform from Washington, leaving no area of education off-limits. Beyond such laws, Washington’s regulations and guidance dictate implementation of the 150-plus federal education programs. Hundreds of pages in the Code of Federal Regulations specify the operation of the U.S. Department of Education’s

K–12 education programs. The department has also issued guidance on K–12 education on 100 occasions since NCLB enactment in 2002.<sup>8</sup>

**Federal Education Intervention Erodes Good Governance.** Washington’s intervention has led to increased state and local education bureaucracy and shifted focus toward compliance with federal policy. This undermines schools’ direct accountability to parents and taxpayers and erodes good governance.

**Enlarges state and local bureaucracy.** State education bureaucracy grew rapidly following the 1965 passage of ESEA: Between 1966 and 1970, Congress appropriated \$128 million for state education agencies (SEAs), and their staffs doubled.<sup>9</sup>

At the local level, K–12 public school enrollment has increased just 7 percent since 1970, while staff hires have increased 83 percent. Teachers as a percentage of school staff has declined significantly, from 70 percent in 1950 to 51 percent in 2006.<sup>10</sup>

**Fosters a “client mentality” on the part of states.** State bureaucracy grew following 1965 because of the focus on tapping the new federal funding source and implementing federal programs. This created

1. Jennifer A. Marshall, “Effects of the Federal Role and Intervention in Education,” testimony before the Subcommittee on Early Childhood, Elementary and Secondary Education, Committee on Education, U.S. House of Representatives, March 15, 2011, at <http://www.heritage.org/Research/Testimony/2011/03/Effects-of-the-Federal-Role-and-Intervention-in-Education> (April 6, 2011).
2. Lindsey Burke, “Creating a Crisis: Spending Increase to Fund Bloated Education Bureaucracy,” Heritage Foundation WebMemo No. 2946, July 2, 2010, at <http://www.heritage.org/Research/Reports/2010/07/Creating-a-Crisis-Spending-Increase-to-Fund-Bloated-Education-Bureaucracy>.
3. U.S. Government Accountability Office, “Federal Education Funding: Overview of K-12 and Early Childhood Education Programs,” GAO-10-51, January 2010, at <http://www.gao.gov/new.items/d1051.pdf> (April 6, 2011).
4. Burke, “Creating a Crisis: Spending Increase to Fund Bloated Education Bureaucracy.”
5. Lindsey Burke, “Education Spending in the American Recovery and Reinvestment Act: Stimulating the Status Quo,” Heritage Foundation WebMemo No. 2868, April 16, 2010, at <http://www.heritage.org/Research/Reports/2010/04/Education-Spending-in-the-American-Recovery-and-Reinvestment-Act-Stimulating-the-Status-Quo>.
6. “Fiscal Year 2011 Budget Summary,” U.S. Department of Education, February 1, 2010, at <http://www2.ed.gov/about/overview/budget/budget11/summary/edlite-section1.html> (April 6, 2010).
7. Lindsey Burke, “Creating a Crisis: Schools Gain Staff, Not Educational Achievement,” Heritage Foundation WebMemo No. 2914, May 26, 2010, at <http://www.heritage.org/Research/Reports/2010/05/Creating-a-Crisis-Schools-Gain-Staff-Not-Educational-Achievement>.
8. U.S. Department of Education, “Significant Guidance Documents,” March 16, 2011, at <http://www2.ed.gov/policy/gen/guid/significant-guidance.doc> (April 4, 2011).
9. Department of Health, Education, and Welfare, Office of Education, “State Departments of Education and Federal Programs: Annual Report Fiscal Year 1970,” pp. 1 and 4.
10. U.S. Department of Education, National Center for Education Statistics, “Digest of Education Statistics, 2008,” at [http://www.nces.ed.gov/programs/digest/d08/tables/dt08\\_080.asp?referrer=list](http://www.nces.ed.gov/programs/digest/d08/tables/dt08_080.asp?referrer=list) (April 6, 2011).

a “client mentality” that has undermined effective educational governance and direct accountability to parents and other taxpayers.<sup>11</sup> About 10 percent of local education funding is from taxpayer dollars cycled through the federal government,<sup>12</sup> but by some estimates the federal government is responsible for more than half of the red tape local schools face.<sup>13</sup>

States often exert enormous energy to obtain federal funding. For example, in the recent Race to the Top grant competition, 41 states spent countless man-hours crafting applications—some close to 1,000 pages—in order to qualify for a slice of the \$4.35 billion funding. Only 11 states ultimately received awards. For the rest, the significant amount of time and money expended on grant applications will not be recouped by taxpayers.<sup>14</sup>

**Disrupts direct accountability to parents and taxpayers.** Accountability is often the reason given for expansive federal intervention in local schools. Accountability is certainly important, but *to whom* and *for what*? Rather than answering up the bureaucratic chain of command to Washington, accountability should be directed to parents and other taxpayers. Positive student outcomes are more likely when incentives are aligned so that schools are most accountable to those with the most at stake in students’ educational outcomes—their parents.<sup>15</sup> Policies that roll back federal intervention, which detracts from this proper alignment, and advance parental choice can help redirect accountability from Washington to parents.

**Federal Intervention Creates a Compliance Burden that Saps Time and Money.** The number and scope of federal programs and regulations has created a significant compliance burden for local schools. This wastes time and money that could be more effectively deployed to achieve educational excellence. Moreover, an education dollar spent by Washington does not translate into a dollar spent in a local classroom.

**Diminished funds.** For three decades, the U.S. Education Department has collected taxes, filtered that money through the Washington bureaucracy, and sent it back to states and school districts. Each step diminishes the funds available to local schools due to administrative set-asides and other spending. By one 1998 estimate, only 65 cents to 70 cents of every dollar makes its way to the classroom.<sup>16</sup> For 30 years, this spending cycle has failed to improve education.

**Human capital wasted.** The federal burden should also be calculated in terms of opportunity cost, as school staff attention is directed to program administration and reporting rather than educational activities. According to the Office of Management and Budget in 2006, NCLB had increased the annual paperwork burden on state and local communities by 7 million hours, or \$140 million.<sup>17</sup> One district reports that “the cost of setting aside a single day to train the roughly 14,000 teachers in the division on the law’s complex requirements is equivalent to the cost of hiring 72 additional teachers.”<sup>18</sup>

11. Jennifer A. Marshall, “Effects of the Federal Role and Intervention in Education.”

12. Public education revenue is drawn from three sources of government: federal, state, and local. In 2004 to 2005, state government provided the largest share of public education revenues: 46.9 percent. Local governments provided 44.0 percent, and the federal government provided 9.2 percent. U.S. Department of Education, National Center for Education Statistics, “Digest of Education Statistics, 2008.”

13. Jennifer A. Marshall, “Effects of the Federal Role and Intervention in Education.”

14. U.S. Department of Education, Race to the Top Fund, States’ Applications, Scores and Comments for Phase I, at <http://www2.ed.gov/programs/racetothetop/phase1-applications/index.html> (April 6, 2011).

15. Lindsey Burke and Jennifer Marshall, “Why National Standards Won’t Fix American Education: Misalignment of Power and Incentives,” Heritage Foundation *Backgrounder* No. 930, May 21, 2010, at <http://origin.heritage.org/Research/Reports/2010/05/Why-National-Standards-Won-t-Fix-American-Education-Misalignment-of-Power-and-Incentives>.

16. *Education at a Crossroads: What Works and What’s Wasted in Education Today*, Subcommittee Report, Subcommittee on Oversight and Investigations, Committee on Education and the Workforce, U.S. House of Representatives, July 17, 1998, at <http://www.eric.ed.gov/PDFS/ED431238.pdf> (April 6, 2011).

17. *Federal Register*, Vol. 71, No. 202 (October 19, 2006), p. 61,730.

**Taking the First Steps.** Congress should set a course to get Washington out of the way of local schools and restore constitutional governance in education, beginning with the following near-term steps:

**1. Take stock of and lead Americans in conversation about the toll federal intervention is taking on local schools.** Policymakers need much more information on the scope and effects of federal intervention. Studies by GAO and others should investigate the extent and impact of the federal role in schools today. Policymakers should explain the toll of federal intervention through hearings, town halls, and an ongoing rhetorical campaign to accomplish a public opinion shift like that on welfare reform in the 1990s.

**2. Allow states to opt out of federal K–12 programs and direct funding to state education priorities.** Federal policymakers should provide states with increased freedom so that they can focus on direct accountability to parents and taxpayers, not federal compliance. The A-PLUS proposal,<sup>19</sup> a conservative alternative to NCLB, would allow state leaders to opt out of and consolidate funding from dozens of federal K–12 education programs and direct it to the most pressing education needs in their states without all the federal red tape. Meanwhile, it would provide transparency and accountability to parents and taxpayers for education results.

**3. Make way for state systemic reform.** Federal systemic reform strategies, which have sought

system-wide change since the 1990s through a top-down approach, have failed to improve academic outcomes. By contrast, state reforms have reaped results. Systemic reform in Florida, for example, has had impressive results reducing achievement gaps—succeeding at the original objective that spurred Washington’s intervention.<sup>20</sup> Other states have led the implementation of charter schools, school vouchers, and education tax credits. The most promising education reforms have proliferated through local and state leadership paving the way. Washington should get out of the systemic reform business, ending policies that overreach in this way and eliminating or consolidating programs to reduce redundancy and compliance burdens.

**4. Simplify Title I and make it student-centered.** Title I funding for low-income students has become enormously complex since 1965, making it likely that “no more than a handful of experts in the country clearly understand the process from beginning to end.”<sup>21</sup> To make sure maximum funding reaches low-income students, Congress should fund states based on the number of low-income students using a set per-pupil allocation. Congress should also allow states the flexibility to fund the student, not the system, through portability of the student’s per-pupil allocation to a school of choice.<sup>22</sup>

**5. Advance parental choice in education where appropriate.** Every child should be free to attend a safe and effective school. To achieve true accountability and improved outcomes, parents should have the power to choose such a school, with money following the child. For constitutional and practi-

18. “The Cost of Fulfilling the Requirements of The No Child Left Behind Act for School Divisions in Virginia and Report to the Governor and General Assembly on the Costs of the Federal No Child Left Behind Act to the Virginia Department of Education,” Virginia Department of Education, September 2005, at [http://www.doe.virginia.gov/federal\\_programs/esea/reports/appendices\\_cost\\_fulfilling\\_requirements.pdf](http://www.doe.virginia.gov/federal_programs/esea/reports/appendices_cost_fulfilling_requirements.pdf) (April 4, 2011).

19. Dan Lips, “Reforming No Child Left Behind by Allowing States to Opt Out: An A-PLUS for Federalism,” Heritage Foundation *Backgrounder* No. 2044, June 19, 2007, at <http://www.heritage.org/Research/Reports/2007/06/Reforming-No-Child-Left-Behind-by-Allowing-States-to-Opt-Out-An-A-PLUS-for-Federalism>.

20. Lindsey Burke, “Closing the Racial Achievement Gap: Learning from Florida’s Reforms,” Heritage Foundation *Backgrounder* No. 2468, September 17, 2010, at <http://www.heritage.org/Research/Reports/2010/09/Closing-the-Racial-Achievement-Gap-Learning-from-Floridas-Reforms>.

21. Susan Aud, “A Closer Look at Title I: Making Education for the Disadvantaged More Student-Centered,” Heritage Foundation *Special Report* No. 15, June 28, 2007, at <http://www.heritage.org/Research/Reports/2007/06/A-Closer-Look-at-Title-I-Making-Education-for-the-Disadvantaged-More-Student-Centered>.

22. *Ibid.*

cal reasons (since most education funding comes from state and local sources), parental choice programs should be administered at the state or local level in most cases. One clear exception is in the nation's capital.

Washington, D.C., is a federal city, and Congress's jurisdiction makes it appropriate to authorize a voucher program there. In 2004, the D.C. Opportunity Scholarship Program (DCOSP) was enacted to allow low-income students to attend a safe and effective school of their choice. Since 2009, opponents have blocked new students from the program. In the 112<sup>th</sup> Congress, House Speaker John Boehner (R-OH) and Senator Joe Lieberman (I-CT) introduced legislation to restore and expand the DCOSP, which the House passed on March 30, 2011.<sup>23</sup>

#### **Empowering Those Closest to Students.**

Expansive federal funding and burdensome administrative mandates have eroded good governance, increased state bureaucracy, and achieved poor results. Congress should take steps to restore constitutional governance by sending dollars and decision making to those closer to students—freeing states from programmatic strictures and lifting compliance burdens from local leaders—and by promoting parental choice where appropriate. Empowering parents to choose the best schools for their children and releasing schools from bloated bureaucracy can improve every child's opportunity to achieve educational excellence.

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23. Rachel Sheffield, "School Choice: Created Equal, but Not in Washington, D.C.," *The Foundry*, March 28, 2011, at <http://blog.heritage.org/2011/03/28/school-choice-created-equal-but-not-in-washington-d-c>.