

**EDUCATION AND FEDERALISM: THE ROLE FOR THE FEDERAL GOVERNMENT
IN EDUCATION REFORM**

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Education Law & Policy

Spring 2010

I. INTRODUCTION

In an era where the United States is lagging behind in global education rankings, some blame the variance in state standards and the American model of allocating responsibility for education to the individual states.¹ Distribution of responsibility across local, state and the federal governments is a hallmark of American constitutionalism. Even in an increasingly globalized world, the federal government has a place but allowing states and local governments to play the largest roles in providing and regulating education is the most effective way for American students to once again become competitive in the global market.

Justice Stevens, in a dissenting opinion, lauded local control of education and offered several arguments in favor of a system primarily based on local control.² First, decisions about education, and particularly exposure to “ideological cross-currents,” should be made by those closest to the children involved and familiar with the “culture of the community.”³ Second, the financial structure of school funding is such that schools should be able to shape their curriculums in response to local concerns.⁴ The people most directly responsible for funding local education will likely be the most invested in its outcomes and policies. Lastly, the desires of parents with respect to their children’s education should be respected and not delegated to politicians far removed from the community.⁵

These arguments, along with the consistent failure of the federal government to improve the current educational atmosphere, provide the foundation for a movement back to increased

¹ Weak at the Core: The United States Faces an International Achievement Gap, and Thus the Need for National Standards in Education, Akron Beacon J., March 14, 2010 at A8.

² *Bd. of Educ. of the Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 290 (1990) (Stevens, J. Dissenting).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

local control. A decreased role for the federal government, in the form of incentivizing innovative solutions to local and national education problems will provide the framework for a successful response to the United States' declining global rankings.

II. THE PROBLEM OF DECLINING GLOBAL RANKINGS AND THE FEDERAL RESPONSE

Globalization and its implications for the modern workforce are undeniable and likely will only become more significant in the future. However, the United States seems unable to keep up with the demands of a global economy in terms of education rankings.⁶ Some argue that the need to maintain an academic advantage over international peers requires the federal government to set national standards for education and actively enforce them.⁷ But the federal role in education has consistently expanded over the last 50 years and has yet to demonstrate its ability to effectively reform American education.

Perhaps the most significant and far reaching attempt was The No Child Left Behind Act (NCLB). The NCLB was an aggressive and ambitious attempt by the federal government to improve American education. However, it was not the first time the federal government inserted itself into the realm of education. These initial attempts by the federal government were largely a response to concerns about considerable racial disparities in education, precipitated by the Supreme Court's holding in *Brown v. Board of Education* in 1954.⁸ The role of the federal government in ensuring access to education for disadvantaged groups should not be

⁶ Alliance for Excellent Education, *How Does the United States Stack Up? International Comparisons of Academic Achievement* 1-2 (2008).

⁷ *Weak at the Core: The United States Faces an International Achievement Gap, and Thus the Need for National Standards in Education*, Akron Beacon J., March 14, 2010 at A8.

⁸ Umpstead, Regina R., *The No Child Left Behind Act: Is It An Unfunded Mandate or a Promotion of Federal Educational Ideals?* 37 J.L. & Educ. 193, 196 (2008).

underestimated⁹, particularly when the remnants of discrimination still plague American schools, and the federal government should continue to promote accessible education for these groups. But while racial and gender-based discrimination are problems of national magnitude requiring a decisive national response, other problems facing the United States' educational system today are quite different.

The Elementary and Secondary Education Act (ESEA) was passed in 1965 and represented one of the first major attempts by the federal government to address growing disparities in education. The Act established the Department of Education and a Secretary of Education.¹⁰ Significantly, the Act notes that “The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and local school systems...”¹¹

In response to growing concerns about how United States students were measuring up against their global counterparts, the federal government began to take on an even more active role in education.¹² The focus of these efforts shifted from ensuring accessible education to emphasizing the quality of education.¹³ When it became clear that schools were not meeting the education goals set in the 1980s, the federal government sought a more comprehensive approach.¹⁴

⁹ *Id.*

¹⁰ 20 U.S.C. §3411

¹¹ 20 U.S.C. §3403(a)

¹² Powell, Brandi M., Take the Money or Run?: The Dilemma of the No Child Left Behind Act for State and Local Governments. *Loy. J. Pub. Int. L.* 153, 157 (2005).

¹³ *Id.*

¹⁴ *Id.* at 158.

The No Child Left Behind Act, passed in 2001, delegates the responsibility for setting educational standards—known as ‘Adequate Yearly Progress’—to the states.¹⁵ The Secretary evaluates state plans for compliance with the requirements in the act.¹⁶ States that elect to participate in this program agree to comply with the act’s requirements in exchange for federal funding. Failure to meet these requirements results in the loss of the funds.¹⁷ Notwithstanding the funding problems posed by No Child Left Behind, including accusations that it is an unfunded mandate and a sixth circuit finding that NCLB does not provide notice to the states that they will be required to fund any additional costs of compliance with the acts requirements above the federal funds provided¹⁸, the act was an important step towards reforming national education achievement.¹⁹ However, since NCLB was implemented, United States students still lag behind many of their international peers.²⁰

III. ADVANTAGES OF STATE AND LOCAL CONTROL

States provide ideal laboratories for devising solutions to waning educational achievements. Even strong proponents of national control over education recognize that individual states are in the best position to determine what incentives or disincentives will most effectively accomplish academic improvement within that district.²¹ On several occasions, the Supreme Court has also noted that states are in a unique position to deal with the challenges

¹⁵ 20 U.S.C. §6311(b)(2)(B).

¹⁶ 20 U.S.C. §6311(e).

¹⁷ 20 U.S.C. §6311(g)

¹⁸ *Sch. Dist. of the City of Pontiac v. Sec’y of the U.S. Dep’t of Educ.*, 584 F.3d 253, 277 (6th Cir. 2009).

¹⁹ Powell, Brandi M., *Take the Money or Run?: The Dilemma of the No Child Left Behind Act for State and Local Governments*. Loy. J. Pub. Int. L. 153, 184 (2005).

²⁰ Alliance for Excellent Education, *How Does the United States Stack Up? International Comparisons of Academic Achievement 1-2* (2008).

²¹ Pinder, Kamina Aliya, *Federal Demand and Local Choice: Safeguarding the Notion of Federalism in Education Law and Policy*, 39 J.L. & Educ. 1, 31-32 (2010).

presented by undertaking to provide education to its citizens.²² Now, perhaps more than ever, the United States must take advantage of its unique political structure and tap into local resources to respond to this growing and significant problem.

The strongest advantage of permitting states and especially local governments to control education is that each entity will be able to develop programs that are responsive to individual needs.²³ As Justice Powell remarked, “No area of social concern stands to profit more from a multiplicity of viewpoints and from a diversity of approaches than does public education.”²⁴ The problems affecting educational achievement vary from state to state and from district to district. Not only are local school districts in the best position to assess and respond to these problems, they are also in the best position to develop a curriculum tailored to the unique needs of their community. Because the problems are often individualized, the solution must be as well.

Similarly, the majority of funding for education comes from state and local sources.²⁵ Although the federal role in funding education has increased in recent years, schools are still primarily funded by the communities in which they are located. Community members are much more likely to be invested in the success of their schools if they are also directly invested in the schools through tax dollars. Shifting more control over schools to the federal government while still leaving state and local governments with the responsibility to fund schools will only produce frustration and hinder innovation.

²² *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 42 (1973)(citing *Jefferson v. Hackney*, 406 U.S. 535, 546-47 (1972)).

²³ *Id.* at 50.

²⁴ *Id.*

²⁵ Powell, Brandi M., Take the Money or Run?: The Dilemma of the No Child Left Behind Act for State and Local Governments. *Loy. J. Pub. Int. L.* 153, 168 (2005).

On a different level, parents should be able to control the education of their children through participation in local school programs and boards without federal officials dictating curriculum requirements. As the federal government's role in controlling education increases, the opportunity for parents to have input into and participate meaningfully in their children's education decreases. As Justice Stevens pointed out in *Mergens*, from an ethical standpoint the wishes of parents regarding their children's education should be respected.

Officials responsible for the school system can better be held accountable at the local level as well. When the responsibility for education's success is delegated to a group of local community members, not only are they in the best position to determine the needs of their specific community but the community is also able to remove or replace officials whom they feel have been unresponsive to their needs. While members of Congress are also subject to political accountability, it is much more difficult to hold Congress accountable for the failure of individual, local schools. Parents and communities must have recourse to change directions when their school system has failed their students.

As the federal government has taken on a more active role in regulating education, the power struggle between state or local governments and the federal government has grown. For example, prior to the passage of NCLB, Connecticut developed a system of assessment which included multiple choice questions as well as short answer and essay questions in the areas of reading, writing and mathematics.²⁶ Connecticut's program also made significant accommodations for special education students and students for whom English was not their primary language.²⁷ Although the state's education system is not without its shortcomings,

²⁶ *Connecticut v. Spellings*, 453 F. Supp. 2d 459, 475 (D. Conn. 2006).

²⁷ *Id.* at 476.

specifically the District Court referenced an NAACP report indicating that Connecticut had not successfully remedied a “poor to non-poor achievement gap,” Connecticut students are among the highest achieving students in the country.²⁸ Following the passage of NCLB, Connecticut requested a waiver of the NCLB requirement to administer a yearly assessment test, arguing that their current form of assessment was superior.²⁹ The waiver was denied and Connecticut filed suit challenging several provisions of NCLB.³⁰

While *Connecticut v. Spellings* provides an interesting look into the shortcomings of NCLB and the judicial response to these challenges, this case importantly highlights the problems with the current federal stance toward education.³¹ Connecticut has developed a system by which to measure student achievement but its efforts to improve an already successful school system are hindered by the imposition of federal requirements. Rather than discouraging different approaches, the federal government should encourage states like Connecticut to build upon already successful programs.

IV. STRIKING THE BALANCE BETWEEN LOCAL, STATE AND FEDERAL CONTROL

Federal government involvement in education policy is inevitable as education continues to be at the forefront of national issues due to the United States’ declining global rankings.³² However, the role of the federal government should be limited to establishing national goals for education and providing funding in the form of incentives to states that are capable of meeting those standards as well as ensuring compliance with civil rights. The ideal role for the federal

²⁸ *Id.* at 475. *See also*, U.S. Department of Education Institute of Education Sciences, National Center for Education Statistics <<http://nces.ed.gov/nationsreportcard/states/>>

²⁹ *Id.* at 476.

³⁰ *Id.* at 464-65.

³¹ *See also*, Powell, Brandi M., Take the Money or Run?: The Dilemma of the No Child Left Behind Act for State and Local Governments. *Loy. J. Pub. Int. L.* 153, 153-54 (2005).

³² Pinder, Kamina Aliya, Federal Demand and Local Choice: Safeguarding the Notion of Federalism in Education Law and Policy, 39 *J.L. & Educ.* 1, 2 (2010).

government, then, is to encourage states to come up with creative, practical solutions to improve education through rewarding success rather than punishing failures.

Such a plan would require evaluation of progress through national testing and development of standards by the federal government rather than allowing states to come up with their own educational standards.³³ An incentive program would not be coercive but would instead encourage states to develop innovative ways of meeting the national goals, rather than the NCLB system which encourages states to lower standards and avoid federal penalties. This type of incentive based answer to the education problem is entirely consistent with constitutional principles of federalism. Such a program would allow states to do what they do best—devising creative strategies to solve pervasive problems and tailoring the solutions to the unique needs of the population of that state—while the federal government facilitates innovation through deregulation.

Under the Obama Administration, the Department of Education has developed a new proposal to reform the educational system through the reauthorization of the Elementary and Secondary Education Act.³⁴ Among the goals of ‘Race to the Top’ is for every student to graduate from high school prepared for college and a career, restructuring the lowest performing schools and creating an Investing in Innovation fund which would reward successful existing programs and encourage the development of new programs.³⁵ This proposal takes an important step towards changing the course of federal involvement in day to day education policy.

³³ Chester E. Finn, Jr. & Michael J. Petrilli, *A New New Federalism*, 6 EDUC. NEXT, Issue 4, 48 (2006).

³⁴ U.S. Department of Education, Office of Planning, Evaluation and Policy Development, *ESEA Blueprint for Reform*, Washington D.C. 2010.

³⁵ *Id.* at 3-6.

Nonetheless, to the extent that the Blueprint attempts to tell states how to fix failing schools, it goes too far.³⁶ Less federal oversight will allow states to develop creative solutions for failing schools. Although there is no federal right to education, most state constitutions include a right to education or at least require the state to provide a free public education.³⁷ It is in the best interest of individual states to provide the best possible education for their citizens in the hopes that those same students will in turn contribute to the economy and welfare of that state. Overregulation and labeling by the federal government stifles creative solutions to pervasive problems.³⁸

V. CONCLUSION

The role of the federal government in education should be limited to setting national goals, incentivizing creative approaches to meeting those goals by individual states and local communities, and ensuring accessible education by investigating civil rights violations. Education is an area best left to state and local governments because those closest to the students are in the best position to determine their academic needs. States and local communities also provide most of the funding for local schools and thus, are more invested in the success of these schools. Moreover, schools should be able to respond to the wishes of parents regarding their children's education without undue federal regulation. Even as the federal role in education has increased in the last several decades, the federal government has been unable to successfully improve schools.

³⁶ *Id.* at 10.

³⁷ Umpstead, Regina R., *The No Child Left Behind Act: Is It An Unfunded Mandate or a Promotion of Federal Educational Ideals?* 37 *J.L. & Educ.* 193, 196 (2008).

³⁸ *See*, Chester E. Finn, Jr. & Michael J. Petrilli, *A New New Federalism*, 6 *EDUC. NEXT*, Issue 4, 49 (2006).

The problems facing American education today are unique and varied and cannot be solved by a one-size fits all approach. The best chance for success lies in the classic constitutional principles of federalism—allowing the states to devise innovative solutions tailored to their local communities while the federal government encourages creativity through incentives and deregulation.