



A dubious anniversary for the federal role in education

By Jason Russell

April 10, 2015

Saturday marks the 50th anniversary of the Elementary and Secondary Education Act, which established the precedent of a larger federal role in education that lives on today.

Today, conservatives argue that there should be little to no federal role in education. But the arguments for a federal role in education were different in 1965, when many students faced discrimination through education funding from state and local governments.

Rick Hess, the Director of Education Policy Studies at the American Enterprise Institute, says trying to steer federal education funding towards students in poverty may have been constructive. "You can make reasonable arguments either way about the feds getting involved [in 1965]," Hess told the *Washington Examiner*. "States were doing a pretty lousy job in terms of trying to address some of the really deep inequities baked in the school funding systems."

Neal McCluskey, associate director of the libertarian Cato Institute's Center for Educational Freedom, says there's room for a federal role in education, but the original ESEA overstepped the appropriate role. "It certainly wasn't constitutional," McCluskey told the *Examiner*. "[The federal government] doesn't have the authority to govern or be involved in education outside of a few specific things." Under the 14th Amendment, the federal government does have a responsibility to prohibit discrimination in state and local schools, McCluskey says. Other parts of the Constitution allow the federal government to run schools on military bases and in the District of Columbia.

For President Obama's administration and teachers unions, the 50th anniversary of ESEA is more clearly worthy of celebration.

In a press release Friday, the National Education Association praised the law as "the first general aid-to-education program ever adopted by Congress. It provided much-needed funding to help level the playing field for the most vulnerable students: children living in poverty, students with disabilities and English-language learners."

In a speech Thursday, Secretary of Education Arne Duncan credited the law for advancing education over the last 50 years. "ESEA marked an extraordinary step for education, and for civil

rights," Duncan said. "ESEA has built a foundation under our nation's schools, helping to raise the bar for every child, and to ensure that the resources are there for those most in need. It's helped create an expectation that no matter where you live in this country, when students aren't making progress, local leaders will come together to make change — especially if they are students with disabilities, students who are still learning English, students from a particular racial group, students who live in poverty, or students coming from particular school."

Views on the federal role in education are more mixed today. The last reauthorization of ESEA was signed in 2002, better known as No Child Left Behind. That iteration of federal education legislation was intended to be reformed again in 2007, but eight years later reform is yet to come.

There are bipartisan calls for ESEA reform, but there's little agreement over what direction that reform should go. Republicans want to reduce the federal role in education and limit the Department of Education's ability to regulate local schools. Democrats oppose federal funding that follows a student to their school of choice and want to eliminate the consequences of poor testing results.

Believe it or not, both sides got some of what they wanted in a draft reform bill released by Senate education committee Chairman Lamar Alexander, R-Tenn., and Ranking Member Patty Murray, D-Wash. Neither side thinks the draft is ideal, but it seems likely to make it out of committee, amended, and get a vote on the Senate floor by Memorial Day.

Both Hess and McCluskey are sympathetic to the view that there should be no federal role in education, but agree the Alexander and Murray draft bill is an improvement upon what is now in place.

Hess prefers a more conservative draft bill released by Alexander earlier this year or else the reform bill that passed the House education committee in February. However, passing the Alexander and Murray draft bill would be better than passing nothing. "It gets the federal government out of the business of trying to tell states whether schools are doing well or not," Hess said. "It gets the federal government out of the business of telling states what they're supposed to do about struggling schools, and it gets the federal government out of the business of deciding who's a qualified teacher. So frankly, I think it gets the big things right."

McCluskey agrees the bill is better than the current state of affairs. "It's an improvement over No Child Left Behind in that it is somewhat less prescriptive," McCluskey said. However, he is skeptical the bill's language will prevent the Department of Education from bypassing Congress and regulating state and local education policy, as the Obama administration has done using waivers from No Child Left Behind's punishments. "Often when you have contradictions or you have wording that may not be completely clear, the regulatory process fills in the blanks. ... You open the door for an administration, the executive branch, to sort of make their own interpretation and do whatever they want."

Regardless of the merits of the original ESEA in 1965, the law faces an uncertain future. Ironically, conservatives in the House of Representatives, unwilling to vote for a moderate education reform bill, might become the reason No Child Left Behind stays in place a few more years. Without reform, one thing is sure: Obama's Department of Education gets to keep deciding federal education policy by executive action, without input from elected officials in Congress.