



The Role of the Federal Government in Public Education, Part 4

HISTORICAL PERSPECTIVES

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Defining League Positions in Public Education

The League of Women Voters United States (LWVUS), through its positions on equality of opportunity, supports public education and a range of federal education programs.

Areas where specific positions were developed are: integration, quality education, tuition tax credits, federal programs and education financing. Some programs are designed to meet the needs of special education students as well as the economically disadvantaged and ethnic minority students. The League worked for the passage of Title IX of the Education Amendment of 1972 that prohibits sex discrimination in educational institutes that receive federal aid. Historically, many state Leagues have their own positions that speak to equality, to funding, and to assessments and standards at the state level. Additionally the League, under its position on early intervention for children at-risk addresses issues related to the federal role in public education.

To understand and reach consensus on the present and future role of the federal government in public education, it is important that we have some understanding of the history of the federal government's role in education activities. This paper and the links provided on the LWVUS website (www.lwv.org) delineate the materials that support this study.

Where Have We Been?

From the very beginning of our Republic, a well-educated citizenry was thought to be essential to protect liberty and the general welfare of the people. Even before the Constitution of the United States was established, the Land Ordinance of 1785 and the Northwest Ordinance of 1787 included responsibilities of the nation for an education system.

Education has long been considered a national concern by the federal government. Through federal action, education has been encouraged and financially supported from the first Northwest Ordinance in 1787 to the present. Article 1, Section 8, of the Constitution granted Congress the power to lay and collect taxes to provide for the general welfare of the United States. It is under this "general welfare" clause that the federal government has assumed the power to initiate educational activity in its own right and to participate jointly with states, agencies and individuals in educational activities.

During the first century of the new nation, Congress granted more than 77 million acres of the public domain as an endowment for the support of schools through tracts ceded to the states for the support of public schools. In 1841, Congress passed an act that granted 500,000 acres to eight states and later increased grants to a total of 19 states. The federal government also granted money to states, such as distributions of surplus

federal revenue and reimbursements for war expenses. Though Congress rarely prescribed that such funds be used only for schools, education continued to be one of the largest expenses for state and local governments, so the states used federal funds whenever possible.

Two Constitutional Amendments played an important role in public education. In 1791, the 10th Amendment stated, "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." Public education was not mentioned as one of those federal powers, and so historically has been delegated to the local and state governments.

In 1868, the 14th Amendment guaranteed rights to all citizens by stating "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens in the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

From colonial times through the early 19th century, before common schools became an established part of society, children were educated in an assortment of institutions and arrangements mostly supported by local entities.

During the 19th century the federal government involvement in education included vocational training, land grants, and the establishment in 1867 of the Office of Education. The purpose of this office was to collect information on schools and teaching that would help states establish effective school systems.

The passage of the Second Morrill Act in 1890 gave the Office of Education responsibility for administering support for the original system of land-grant colleges and universities. Vocational education became the next major area of federal aid to schools with the 1917 Smith-Hughes Act followed by the 1946 George-Barden Act focusing on agriculture, industrial arts and home economics training for high school students.

World War II led to a significant expansion of federal support for education. The Lanham Act of 1941 and the Impact Aid laws of 1950 eased the burden on communities affected by the presence of military and other federal installations by making payments to school districts. In 1944 the GI Bill authorized postsecondary education assistance that would ultimately send nearly 8 million WWII veterans to college.

The Supreme Court handed down the landmark decision *Brown v. Board of Education* in 1954, declaring state laws that established separate public schools based on race unconstitutional. In 1958,

Congress passed the National Defense Education Act (NDEA) in response to the Soviet launch of Sputnik. This legislation included support to teachers through graduate fellowships to improve the teaching of science, mathematics and foreign languages.

The anti-poverty and civil rights laws of the 1960s and 1970s dramatically increased the role of the federal government in public education. Laws passed included Title VI of the Civil Rights Acts of 1964, Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973 prohibiting discrimination based on race, sex and disability.

How Did We Get Here?

In 1965 the Elementary and Secondary Education Act (ESEA Pub.L.89-1- Stat 27, 20 U.S.C. ch 70) launched a comprehensive set of programs including Title I program of federal aid to the disadvantaged. The Act funds primary and secondary education, while explicitly forbidding the establishment of a national curriculum. As mandated in the Act, the funds are authorized for professional development, instructional materials and resources to support educational programs and parental involvement promotion.

The Act was originally authorized through 1970; however, the government has authorized the Act every five to ten years since its enactment. The current reauthorization of ESEA is called the No Child Left Behind Act of 2001 (NCLB). NCLB also allows military recruiters to access 11th and 12th grade students' names, addresses and telephone listings when requested.

In 1980, Congress established the Department of Education as a Cabinet level agency. Then, for the next 12 years under Presidents Ronald Reagan and George H.W. Bush, education was a priority issue. The religious and private sectors were involved as well, with introductions of tax credits, parental involvement and vouchers.

Additionally, in 1982, twenty-five bills were introduced to improve math and science instruction, but all failed in Congress. The tuition tax-credit was proposed for mainly religious schools but broadened to private school tuition in 1983. This too, failed. In 1983, the publication of *A Nation At Risk* brought the competitive nature of education to the forefront, warning that the United States no longer held the education edge when compared to the rest of the world.

In 1989, President George H. W. Bush signaled public school choice to be a "high priority." He also formed a task force to study Hispanic education and called for an "Indian education bill of rights" to help improve education for Native Americans. Drug education also came to the forefront during his Administration.

In 1991, President Bush formed the National Education Goals Panel to create a national assessment system to measure progress toward the national education goals for 2000. In that same year, Congress passed a bill to create a national council on education standards and testing, the purpose of which would be to study the feasibility and desirability of creating national standards and a national examination system for students.

During President Bill Clinton's administration, education achievement focused on the Goals 2000 competitive grants. School districts realized significant gains by using these funds. However, the grants were only awarded to those districts that had the resources to write the grants and study their implication.

President George W. Bush made education issues a priority. NCLB, as described above, was one of the first bills passed by Congress during his Administration.

Where Are We Now?

The United States has changed dramatically since the early debates on the role of public schools and the role of the federal government in supporting and sustaining them.

The importance of education for the common good has shifted from primarily local control to state and national control, with national attention from the Federal government and national organizations. Congress is currently embroiled in a debate and stalemate over the reauthorization of ESEA, the 2001 NCLB.

Major issues include the purpose and role of the federal government in education, funding, and the extent to which the federal government should play a role in public education. Areas for national debate involve school choice, accountability, teacher quality, goals, standards and above all, funding. Federal funding currently averages about 10 percent of local school budgets.

During the coming year, local and state Leagues across the United States will discuss the role of the federal government in public education with the goal of coming to consensus on a number of questions.

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The Role of the Federal Government in Public Education, Part 5

LEGISLATION AND FUNDING FOR THE EDUCATION OF CHILDREN WITH SPECIAL NEEDS

In 1965, the Elementary and Secondary Education Act (ESEA) was passed by Congress. ESEA was the center of President Johnson's War on Poverty and was influenced by the Civil Rights Act of 1964. The children who were covered by ESEA in 1965 included those who were disabled and covered by an amendment to the original ESEA (Title IV – Aid to handicapped children).

Within the next decade, the education of disabled children was funded by a separate law: the Education for All Handicapped Children Act of 1975 (EAHCA). Over a 35-year span, the law was reauthorized and became the Individuals with Disabilities Education Act (IDEA), the latest of which was reauthorized in 2004 and called the Individuals with Disabilities Education Improvement Act (IDEIA). The upcoming reauthorization of ESEA will also influence how IDEIA is administered and practiced.

IDEIA has four sections that cover the Free and Appropriate Education (FAPE) of 6.6 million disabled children who are age 0-21.

Part A (General Provisions)

Part B (Assistance for Education of All Children with Disabilities)

Part C (Infants and Toddlers with Disabilities)

Part D (National Activities to Improve Education of Children with Disabilities)

Mandates in Special Education Funding

Funding requires adherence to the federal mandates. The most important mandate is the zero-reject policy, under which no child is turned away from educational services. To qualify for special education service, a student must be classified with one (or more) of 13 disabilities now covered by IDEIA. The definition of "a child with a disability" is found in the United States Code, Title 29 1401(3) (A):

3) The term 'child with a disability' means a child— (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) Who, by reason thereof, needs special education and related services.

The federal government demands that states submit plans for the distribution of monies to local agencies for direct instructional programming that adhere to federal mandates. Under each state's laws, an Individualized Educational Program (IEP) is constructed for each child receiving services. The purpose of an IEP is to assure the student of a FAPE, as ensured by law. The child is to be placed in the Least Restrictive Environment (LRE) for education.

In order to qualify for federal funds, state and local agencies are bound to federal guidelines to specify identification procedures and the placement of disabled children. State grant applications for federal funds must include a plan for distribution of the funds to local education agencies (LEAs), as well as sufficient time for the general public to review and comment on the state plan. LEAs receive allotments from the state for their district special education needs. The shortfall in funding then needs to be addressed by the local education agencies.

Current Funding Challenges

Federal Underfunding: The Education for All Handicapped Children Act (1975) included legislation for funding local programs through state distribution of 40 percent of the cost. "Full funding" (40 percent) has never happened; the actual amount has varied. There were federal funds covering from 8 to 10 percent of the cost to states ten years ago, according to Katsiyannis, et al. (2001). The FY 2012 U.S. Department of Education Budget lists 17 percent as the current figure, with an estimated \$1,765 cost per pupil. The allotment has increased 1.7 percent in the FY 2012.

Increasing enrollment: Special education enrollment has grown, from 3.8 million in 1973 to 6.6 million in 2011. Federal special education support increases for FY 2012 are held at 1.7 percent over FY 2011.

Maintenance of effort: Because of severe financial straits, more states are applying for waivers to the spending requirement by the federal government for special education funding. The waiver, called a Maintenance of Effort (MOE) has not been easily obtained and involves holding a spending pattern based on the previous year. Waivers were given to Iowa, West Virginia, and Kansas

last year; waivers are pending for New Jersey, South Carolina and Alabama (Shah, 2011).

Inclusion and training: Currently, ninety-five percent of disabled children are educated in inclusive classrooms, the rest being educated in separate classes, institutions or at home. An increase in inclusion practices is a strong possibility for fund-strapped districts (Shah, 2011). The balancing act – attention to finances, while providing for children's needs – continues to be precarious, and it is also critical to provide teachers with quality in-service training.

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Special Education Legislation Milestones

DECADE	CASE/LEGISLATION	RESULT
1950	1954: <i>Brown v. Board of Education</i>	Paved the way for special needs children to receive better education, but at this time children were still denied an education based on their disability.
1960	Bureau of Education for Handicapped - Created. 1965: Elementary and Secondary Education Act became law.	No funding for handicapped under federal or state law. Amendment to original ESEA Title IV – Aid to handicapped children.
1970	1972: <i>P.A.R.C v Pennsylvania</i> and <i>Mills v. Board of Education</i> 1973: Section 504 of the Rehabilitation Act became law. 1974: Family Educational Rights and Privacy Act (FERPA) became law. 1975: Education for All Handicapped Children Act (EAHCA) became law.	Ruled: Disabled have equal rights. Protected disabled individuals from discrimination due to disability. Parents gained access to all information maintained by a school district on their students. Free appropriate public education for all handicapped students.
1980	1986: Addition of <i>Handicapped Children's Protection Act</i> to EAHCA.	Mandated that all school students and parents have rights under both Section 504 and EAHCA.
1990	1990: EAHCA amended and called <i>Individuals with Education Disabilities Act</i> (IDEA). 1996: I IDEA reauthorized.	IDEA reauthorized. Additions include students to be included in state and national assessments, inclusion (Least Restrictive Environment, LRE). Regular classroom teachers now required to take part in an Individual Education Plan (IEP) team.
2000	2001: No Child Left Behind became the title of the Elementary and Secondary Education Act. 2004: Reauthorization of IDEA (P.L. 101-476) now called IDEIA.	Accountability at state and local levels required. School districts are required to provide more instruction and interventions to help prevent enrollment in special education. Response to Intervention (RTI) gains momentum as a screening tool. Students are expected to take responsibility for their behavior and are subject to the same rules as the rest of the students.

Study Documents available online at: www.lwv.org/AM/Template.cfm?Section=Public_Education&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=191&ContentID=17596

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