A principled federal role in PreK-12 education

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The federal government’s role in PreK-12 education has long been contentious and continues to evolve. Indeed, the last 15 years have seen more change in the federal role than any time since the 1960s. After a period of heightened activity under Republican and Democratic presidents, the bipartisan reauthorization of the Elementary and Secondary Education Act in 2015 (now called the Every Student Succeeds Act) sharply reduced the federal government’s role, especially in the design of school accountability systems. President Donald Trump now takes office amid basic, unanswered questions about what, and how much, the federal government should do. This is a pivotal time to revisit the history of the federal role in education and to consider its future.

Recent political discourse over public education has centered on what the federal role should not be. In developing this series of Memos to the President, we outline an affirmative case for an important but limited federal role, in addition to identifying problems that require federal attention and proposing solutions to lingering challenges.

Many have written about education governance, but few have attempted to define an appropriate role for the federal government. That is the core purpose of this essay. We articulate a set of principles to guide the federal role in education that is rooted in the history of American education, consistent with broader principles concerning the role of government in society, and reflected in certain long-established education policies that command broad support. In addition to suggesting what the federal government should do, these principles establish boundaries for where its efforts should end.

We approach these issues from diverse perspectives. Members of our team have advised and served in both Democratic and Republican administrations, and we have varied experiences as scholars and policymakers. However, we share a belief that the federal government has a vital role to play...
in PreK-12 education and that the specific policies it adopts should be guided by both values and evidence. In what follows, we describe the historical evolution of the federal role in education and discuss tensions and synergies inherent in the division of authority across federal, state, and local governments. While the public has now chosen Donald Trump as our next president, we began this project even before the parties had selected their nominees. We did so intent on overcoming ideological differences and avoiding tendencies for policy churn and short-lived solutions.

Complementing this document are 12 memos from nationally respected scholars and experts, each focused on the federal government’s role in relation to a specific aspect of education policy. After outlining a brief history of the federal role in education, the changing and growing role of education in our society, and the principles for the federal role, we introduce the memos and their relationships with our principles.

We note a few caveats. The memos do not cover every important area of federal education policy, nor do we claim that their ideas are completely novel. Rather, we have sought to highlight promising proposals, based on the best available research, that could garner wide agreement. We also do not directly take on challenges in higher education in this series. Although PreK-12 education policy is, and should be, closely interconnected with higher education policy, and some of the memos describe those connections, we leave a focused discussion of higher education topics for a subsequent series of memos.

**HISTORY AND EVOLUTION OF THE FEDERAL ROLE IN EDUCATION**

Debates over the federal government’s role in primary and secondary (PreK-12) education reflect tensions inherent in two amendments of the U.S. Constitution. The Tenth Amendment reserved to the states and their citizens all powers not mentioned in the Constitution, including the provision of public education. The Fourteenth Amendment gave citizenship to all persons born in the U.S., including former slaves, and required each state to “provide equal protection under the law to all people within its jurisdiction.” If states fail to provide equal protection, then the federal government may have to intervene, even in domains that otherwise would be left to the states.

The Fourteenth Amendment’s Equal Protection Clause laid the groundwork for the federal government’s most crucial responsibility in K-12 education: the protection of civil rights. It was this responsibility that led to the Supreme Court’s 1954 decision in *Brown v. Board of Education* banning legally segregated schools. Partly to help states to implement the *Brown* decision and pursue its implied goals, the federal government passed an assortment of laws establishing programs, funding, and requirements to educate underprivileged children. For example, it created Head Start in 1965 to focus on early education for low-income students, and President Johnson signed the Bilingual Education Act in 1968 to provide resources for immigrant education. Most prominently, the Elementary and Secondary Education Act (ESEA) of 1965 sought to enhance educational opportunity for low-achieving students in high-poverty schools—primarily by allocating resources to school districts through its Title I. These programs were central to President Johnson’s War on Poverty and built momentum for the broader civil rights movement.
The federal role continued to expand in the early 1970s with legislation that broadened the scope of efforts to provide all students with equal access to education. Title IX of the Education Amendments of 1972 required gender equality in school activities. The Rehabilitation Act of 1973, together with the Education for All Handicapped Act of 1975 (now the Individuals with Disabilities Act, or IDEA), ensured free access to an appropriate public education for students with disabilities. These judicial and legislative actions created a firm foundation for the federal role in the protection of civil rights that has stood for a half-century.

The history of the federal role in education prior to ESEA is less well known. Since 1867, the federal government has assumed the responsibility of gathering and reporting data on the progress of education in the states. Later, the federal government responded to the crisis in farming after WWI and the Industrial Revolution in part by establishing grants to states to support vocational education. The Cold War, and especially the Soviet launch of Sputnik, created fear of U.S. military and technological decline. Congress quickly responded by passing legislation providing resources for improving math and science education. Provisions were included in ESEA to fund professional development for teachers, state offices of education, and a number of other state and local education activities to help improve overall quality. In 1972, the federal government established the National Institute of Education with the responsibility to carry out research on education issues. These steps were separate from the protection of civil rights and highlight a broader national interest in educational success.

Nevertheless, there have always been implicit limits on the federal role. During much of the past 200 years, the government restrained itself from direct involvement in the basic functions of teaching and learning in the schools. The funds that went to activities such as vocational education, collecting and reporting data, and research were generally not tied to specific mandates concerning school and classroom practices. That changed somewhat with civil rights legislation and related court rulings. Judges in desegregation suits began to require schools to make specific, often controversial, changes in the design of local school systems. IDEA directly affected school-level practices by attempting to equalize student experiences for disabled and non-disabled students. Over time, the alphabet soup of federal education legislation became layered with more and more requirements. The U.S. Department of Education (USDOE) was created in 1979 partly to coordinate and administer these growing responsibilities.

By the early 1980s, some saw the federal role as too large and attempted to scale it back. The 1981 ESEA reauthorization simplified many of the requirements and regulations that had amassed over the prior 20 years. But this retreat was short-lived. *A Nation at Risk*, a 1983 report commissioned by the young Department of Education, argued that U.S. schools were not producing graduates that could compete with other nations (a concern that has been reiterated in every decade since then). Other reports quickly concurred, and through the 1988 ESEA amendments, many prior requirements were put back into law and others were added. Most notably, the amendments required achievement test results to be gathered and analyzed in at least three grades in schools receiving Title I funds and established accountability requirements for these schools, including specific penalties if a school was consistently low-performing. Federal involvement in teaching and learning continued to grow.

At this point there remained an implicit understanding that the federal role should be focused on specific protected classes and disadvantaged populations, especially low-achieving students in low-income communities. This understanding began to change with the 1994 reauthorization of ESEA, known as the Improving America’s Schools Act (IASA). IASA required that Title I schools adopt challenging content and performance standards, align their assessments to those standards, and establish an accountability system based on them. More importantly, the law required that the standards and accountability for Title I schools be the same as the rest of the state’s schools. This change
effectively expanded the scope of law, because to receive Title I funding, states and districts needed standards, assessments, and an accountability system that applied across all schools, regardless of whether they received federal funds. As a result, the Title I requirements for standards and assessments now affected most schools throughout the country. Thus began the modern era in which the federal government has directly influenced the educational experiences of all students.

In 2001, still dissatisfied with the rate of improvement in student achievement, Congress reauthorized ESEA and relabeled it as No Child Left Behind (NCLB). Title I of the new law retained the same structure but intensified its accountability requirements. It increased the number of tested grades from three to seven, set extremely ambitious goals for the percentage of students reaching academic proficiency (while leaving definitions of proficiency to individual states), and prescribed a specific set of sanctions for schools that failed to reach those goals. Even setting aside the near-impossibility of meeting a goal of 100 percent proficiency, this top-down approach went against the long federal tradition of providing support rather than applying pressure.

President Obama’s administration took the top-down approach further with Race to the Top, paid for with $4.35 billion in Congressionally approved funds. It held competitions among states that provided resources to winners to pursue the administration’s priorities: develop state data systems, turn around the bottom five percent of schools, adopt or create high-quality college and career-ready standards, and establish and implement teacher evaluation systems linked to student outcomes. Nineteen states won these competitions and began to undertake the required changes. Further, many states that did not win still adopted one or more of the policies, thereby aligning themselves with the administration’s priorities.

Following a similar top-down approach, the U.S. Department of Education began issuing waivers to the original NCLB provisions to states that agreed to adopt many of the same policies that had been key components of Race to the Top. In exchange for loosening some of the more onerous elements of the NCLB accountability framework, such as its target of universal proficiency, the administration required states to adopt accountability and teacher evaluation policies similar to those that states could (voluntarily) adopt under Race to the Top.

The combination of NCLB, Race to the Top, and NCLB waivers was widely seen as an overreach by the federal government. In 2015, under pressure from education groups and the public, Congress passed with bipartisan support the Every Student Succeeds Act (ESSA). ESSA reduced the federal role in school accountability, eliminated the objective of 100 percent proficiency, and omitted requirements for teacher evaluation. The student testing requirements remained, as did a requirement that states intervene in some fashion in their lowest-performing five percent of schools, but states regained control over how those schools would be identified and what form these interventions would take.

That is where we stand today as the Trump administration prepares to take the reins of the federal government. We have seen ebbs and flows in federal activity, and yet many of the broader issues remain unresolved. What is the appropriate federal role in education? Is there a set of principles to guide its action that could achieve broad
support? How have changes in the world around us altered or accentuated certain principles? We now endeavor to answer these questions.

**THE CHANGING ROLE OF EDUCATION IN SOCIETY**

The historical evolution and expansion of the federal role in education were natural outgrowths of changes in society that led to new public demands and political pressures. The founders had delegated not just responsibility for education, but also responsibility for almost everything else, to the states. Over time, the federal government’s role increased in all walks of life, especially in economic affairs. Interstate commerce became much more widespread, as did the need for national transportation networks, and both required more federal involvement.

The primary rationale for government-sponsored education has also shifted. For the first century of the nation's history, the purpose was to knit together a nation of immigrants into a country with a common language, democratic values, and, for many, religious beliefs. That world changed dramatically in the early 20th century as the second Industrial Revolution took hold. Newly invented machines came with manuals that workers had to read. To use their increased earnings to purchase goods in the burgeoning economy, they had to read and understand the mail-order catalogs that connected far-flung families to new inventions, consumer products, and equipment. People made many of these purchases on credit, which required enough math skills to calculate interest payments. Small businesses and even family farms began to grow in ways that required better accounting, and still more math. Like the railroad and electricity before it, education became the new route to economic progress.

The economic returns to education have continued to grow with the global information economy. Basic skills are no longer enough in many jobs and, for this reason, the labor market returns to bachelor’s and master’s degrees have grown ever larger. And since education is so important to individuals’ success, it is also a tool for addressing what is widely seen as one of the nation’s most pressing problems: wealth and income inequality. The flipside of the rising return to higher education is that those without such credentials increasingly struggle. It is no coincidence that the title of the 2001 federal reauthorization of ESEA highlighted the students who were “left behind.” Education is seen as one of our primary tools for fighting poverty.

The benefits of education go beyond the economic, however. Research strongly suggests that more educated adults live healthier, longer lives and are less likely to divorce, have children out of wedlock, and commit crimes. It is not just about economic growth but quality of life and social well-being. The divides in society increasingly fall along the lines of education.

Education will continue to play a major role in promoting individual opportunity, social mobility, national prosperity, and progress in areas such as health and democratic citizenship. Other policies and institutions also affect these outcomes (trade, labor unions, and monetary policy, to name a few), but the national interest in having a well-educated populace is as strong as ever.
This growth in the social and economic value of education also helps to explain the evolution of the federal role in education. It made sense that the federal role was small when education was seen as more of a religious and civic enterprise, with the federal government focused on military and foreign affairs. The evolution of the federal role does not reflect a profound change in our nation’s philosophy of government as much as it reflects the world changing around the federal government and the government reacting to those changes.

**PRINCIPLES FOR THE FEDERAL ROLE IN EDUCATION**

While there remains no explicit constitutional role for the federal government in PreK-12 education, a common set of principles has emerged on which there is wide agreement. These principles are implicit in landmark judicial decisions and laws that have shaped the development of the federal role. They are rooted in history and in a widely held, but rarely articulated, bipartisan understanding of the role of the federal government in PreK-12 education. These principles are not meant to rationalize everything the government has done historically. Their presence has been felt—and their contours revealed—when the federal government has overstepped its perceived bounds, leading to responses from policymakers and the public.

We believe that four principles define the appropriate role for the federal government in K-12 education:

1. **The federal government should ensure that no student is denied the right to equal educational opportunity based solely on race, ethnicity, gender, disability, or other protected status.**

   This role is rooted in the Equal Protection Clause, as interpreted by the Supreme Court in *Brown v. Board*. Although the Court has continued to stop short of calling education a right under the federal Constitution, it argued in *Brown* that education is so important to functioning in a democracy that “where the state has undertaken to provide it, [education] is a right which must be made available to all on equal terms.” The Office of Civil Rights (OCR) within the USDOE plays an important role in this effort to ensure that students’ civil rights are protected in the provision of education.

2. **The federal government should provide compensatory funding to facilitate access to educational opportunity for high-need students, including, but not limited to, students living in poverty and students with disabilities.**

   In addition to the national interest in protecting civil rights, the existence of a national interest in providing educational opportunity to children who would otherwise be underserved is now generally accepted. The government’s primary tool for promoting this principle is to distribute funds to students who would otherwise have more limited educational opportunities than others. Title I of ESEA and IDEA are primary examples.
3. The federal government should support education research and development, and the gathering and dissemination of information about the scope and quality of the nation’s education system, to inform policy and practice at the state and local levels.

This principle is rooted directly, though only partly, in the importance of measuring the effectiveness of the federal government’s own programs in providing educational opportunity to high-need children and protecting civil rights. Research also plays a broader role by providing new knowledge about all aspects of education. This knowledge is what economists call a national public good, in the sense that research in any state can inform and benefit other states. In such situations, a higher level of government—the federal government—should step in to subsidize research and avoid under-investment by individual states. The same justification applies to the gathering and dissemination of national information about the country’s education system.5

4. The federal government should, in a manner consistent with both its unique advantages and limited capacity, support the development of conditions to promote continuous improvement of state and local education systems.

The federal government is poorly positioned to dictate the details of state and local efforts to improve their schools. It can, however, foster the conditions for educational improvement through capacity-building to provide guidance and support local education systems. A focus on providing clear information about successful practices and the understanding to learn from mistakes are necessary components of a federal strategy. The ultimate goal of these supportive federal activities should be having school systems nationwide pursuing goal-directed continuous improvement.

LIMITS ON THE FEDERAL ROLE

The above principles provide an affirmative case for action by the federal government. It is equally important to consider the limits these principles entail, as actions that are otherwise consistent with our affirmative case can inadvertently undermine local goals and have unintended consequences.6 Even if individual regulations are well intentioned, their cumulative and unintended effects can be difficult to predict and may induce educators to focus on compliance over student success. Federal policymakers should bear this in mind when applying the principles to specific issues, exercising caution even when undertaking actions that the principles would otherwise seem to justify. To illustrate these limits more concretely, we consider some of the most controversial policy issues of the past quarter-century: test-based accountability and school choice.

It might seem self-evident that the federal government should require that states hold their schools accountable, especially for ensuring that all students obtain basic skills. Our own stated principles emphasize the importance of equal opportunity and that the federal government has fiduciary responsibility to ensure that public resources are used effectively. Moreover, accountability supporters argue that capacity and pressure are complementary—that neither works without the other.

Even if we accept these arguments, differences in the needs and goals across communities are likely to undermine the success of any standardized federal accountability system. The track record of recent federal accountability efforts bears this out, as research indicates that their effects on student achievement outcomes have been limited. While strictly speaking, states could have avoided the accountability provisions that started in the early 1990s by declining Title I funds, the sheer magnitude of those funds meant that the provisions were effectively federal requirements.
The fact that some national interest exists, in keeping with the earlier principles, does not mean the federal government can successfully specify or implement solutions to further that interest. As suggested by our principles, there is a clear federal role in ensuring that information is available to evaluate the success of the school system, and to build capacity for continuous improvement, but we do not believe the federal government should be in the business of requiring specific rules for teacher or school accountability. We therefore concur with the general direction of ESSA that ensures some form of accountability but leaves the details to the states.

School choice has been an equally contentious topic. Choice has gradually expanded across the country through growth in the number of charter schools, magnet schools, policies offering choice among traditional public schools, and various programs that provide funding for students to attend private schools. Almost all of these efforts have taken place at the state and local level, which, as with accountability, we believe is the right place for these decisions. The results have differed widely across states and districts because of variation in goals, other related policies, and context, including the types of students they are designed to serve. In some states, choice is intended to attract middle class families in large cities while in others it is intended to create opportunity for under-served populations and competition among schools. Moreover, the effects of choice policies depend on decisions about other policies (e.g., transportation, and school finance) that are clearly within the domain of states. This variation in goals and circumstances reinforces the need to take into account local circumstances and avoid a nationally standardized approach.

School choice is also an area of policy where it is especially important to make sure that well-intentioned federal regulations do not unintentionally interfere with local decisions. Given that choice policies often go hand–in-hand with efforts to expand the autonomy of schools, policymakers should ensure that federal laws and regulations that historically have applied to school districts do not interfere with state and local efforts to implement alternative school assignment or governance arrangements. At the same time, the federal government should continue to ensure that those arrangements do not compromise students’ civil rights or create entanglement with religion.

Beyond these cautions, we do not all agree, as authors, about whether the federal government should actively promote the expansion of school choice policies in states and districts. The federal government has encouraged choice over the past five decades with the Magnet Schools Program and, over the past two decades, with the Charter Schools Program. While some in our group support such federal investments as a promising avenue to build state and local capacity for improvement, others would prioritize different strategies. This disagreement is a good example of how the principles themselves are both specific enough to constructively guide action and broad enough to accept disagreements about specific federal policies. Principles guide federal action, but cannot determine every move.

**RECOMMENDATIONS FROM THE MEMOS**

We conclude by returning to the affirmative principles for the federal role in education and discuss some concrete and constructive recommendations that have emerged in the invited memos.
In keeping with the first principle, on protection of civil rights, our memo series includes a piece on the role of the USDOE Office of Civil Rights. It argues persuasively for a continued and assertive role for the federal government in the protection of civil rights within the context of schooling.

In keeping with the second principle, on supporting under-served students, we invited memos on English Language Learners (Hakuta and Pecheone), special education (Hehir), the Title I funding formula (Gordon and West), early childhood education (Bassok, Magnuson, and Weiland), and student support services (Walsh and Wasser Gish). The memos on career and technical education (Schwartz) and efforts to improve graduation rates especially among the most disadvantaged students (Smith and Parmley) both focus on potential improvements in the federal role during high school and bridging into the early college years.

With these first two sets of recommendations, it is worth re-emphasizing how much greater a role education plays in society now than it did even a few decades ago. The quantity and quality of education children receive is now a significant determinant of life outcomes. Therefore, the protection of civil rights within this context, and the support for education among the disadvantaged, is crucial to assuring equal opportunity in society.

In keeping with the third principle, on research and development and the dissemination of information, one of the co-chairs (Harris) has written a memo arguing for a restructuring of the federal role in education research. He emphasizes, as we do above, that this role has long had bipartisan support—and that the federal government subsidizes research and development in all sectors of the economy.

Finally, with regard to the fourth principle, on capacity-building and continuous improvement, one memo argues that this role can best be fulfilled by encouraging state and local activity based on “improvement science” (Bryk, Ladd, O’Day and Smith). Other memos address capacity-building in more specific areas, including building more integrated and comprehensive human capital systems (Grossman and Loeb) and preparing a new cadre of researchers and evaluators to work directly in and for local school districts and state education agencies (Harris).

Cross-cutting many of the recommendations is the issue of data privacy (Goldhaber and Guidera). We concur with the memo authors that protection of student data privacy is of paramount importance and that there are many ways to strengthen privacy while also making data available in ways that research suggests are in the best interests of students and continuous school improvement. Current laws create significant impediments even though research and development generally involves data that are completely anonymous. As almost all the memos emphasize, data are also necessary for protection of civil rights, for targeting effective programs to disadvantaged students, and for building on data systems to improve high school and college graduation rates and human resources. Educators cannot help their students if they lack the data that help describe their needs.

While some of the recommendations in the memos suggest increases in spending in specific areas, the memos are not a call for a massive infusion of federal funding for PreK-12 education. Some of us as co-chairs of this project are more inclined toward that than others, but we all agree that the federal government can play a much more productive role even with the funding it has now, by taking additional action in some areas and less action in others.

We believe these principles and recommendations should garner widespread support. Written by a bipartisan group of scholars and policy advisors, they are rooted in the most compelling historical federal efforts in education,
recognize the growing social and economic value of education across the country, and align with principles that Democrats and Republicans alike have long embraced.

We live in uncertain times, especially with recent decades of rancor and wild fluctuations in the federal role in preK-12 education. We encourage President Trump, the Secretary of Education, and Congress to consider these principles and related proposals and to establish a stable and effective federal role that will serve well the nation’s schools—and above all, its students—for decades to come.
ENDNOTES

1. A few other milestones are worth noting in the nation’s first century. The Northwest Ordinance of 1787 governing the settlement of newly settled territories, stated that, “Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, and the means of education shall forever be encouraged.” After the Civil War, Congress passed legislation that created a short-lived Department of Education responsible for collecting and disseminating data about education across all of the states. The Department lasted only a few years and its functions were delegated to the Department of the Interior and, later, to Department of Health, Education and Welfare. In the late 1890s, the Supreme Court bowed to segregationists and interpreted the Fourteenth Amendment in Plessy v Ferguson as allowing separate but equal schooling for African Americans, creating de jure segregation in all former Confederate states as well as many Northern states, but this was overturned by Brown.

2. Despite the separation of church and state, many citizens viewed the teaching of religious values as one of the core purposes of education, even in publicly funded schools.

3. Scholars dispute the strength of evidence establishing a direct connection between education quality and national economic growth, but this evidence is not necessary to establish a relationship between education and economic output.

4. The full wording of the Court’s decision is worth considering: “Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”

5. For much the same reason, the federal government subsidizes research and development (R&D) in the private sector with broad bipartisan support; supporting research and development within education should not be a partisan issue.

6. There is, and will always be, a tension between avoiding overregulation and, for example, ensuring civil rights. However, much of the recent debate claiming overregulation in education policy has involved accountability-related regulations outside the scope of civil rights.

7. Home schooling, also considered a form of school choice, has also rapidly expanded.
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