

## DEPARTMENT OF EDUCATION

Congress should

- continue down the path of returning power to states, districts, schools, and parents that slowly began with the Every Student Succeeds Act;
- ultimately eliminate federal involvement in K–12 education except for supplying school choice in Washington, DC; funding education for students in military families and on Indian reservations; and prohibiting discrimination in state and local provision of education; and
- via tax reductions, let taxpayers keep the roughly \$90 billion per year that the federal government spends on K–12 education.

The Constitution gives the federal government no authority to exercise control over elementary and secondary education, including by spending money and attaching conditions to the funds, the primary mode by which Washington has influenced education. And no, the Founders did not exclude dominion over education from the specific, enumerated powers given to Washington because they thought such authority was subsumed under the General Welfare Clause. They did not include it because education was believed best left in the hands of parents and civil society—the families and communities closest to the children—and certainly not in a distant national government. Nearly 60 years of experience with major and, until very recently, constantly expanding federal meddling in K–12 education have proved them right.

### **A Brief History of Federal Involvement**

The federal government is a relative newcomer to elementary and secondary schooling. As many advocates of a federal role in education are quick to point out, the Land Ordinance of 1785 and Northwest Ordinance of 1787 contained provisions calling for territories to dedicate revenue from the sale of portions

of land to educational purposes. But those laws preceded the Constitution, were often ignored, and asserted no federal control over what might be taught, how, or by whom. Education was also barely discussed in the Constitutional Convention. And when it was, the specific subject was almost entirely a national university, which, it was understood, could be created under a specific, enumerated power: jurisdiction over the “Seat of Government,” not any education power. Reinforcing this view, in 1792 James Madison argued against a bill to provide aid to fisheries by noting that, were Congress to decide that the Constitution furnished the authority to spend money thusly, it could also, absurdly, “take into [its] own hands the education of children.” In 1806, President Thomas Jefferson recommended using some federal monies for education, but said “an amendment to the constitution” was “necessary, because the objects now recommended are not among those enumerated in the constitution.” In 1943, the U.S. Constitution Sesquicentennial Commission, chaired by President Franklin Delano Roosevelt, published a document that included the following: “Q. Where, in the Constitution, is there mention of education? A. There is none; education is a matter reserved for the states.”

It was not until the Soviet Union sent the satellite Sputnik into orbit in 1957, and the American public briefly panicked, that the federal government began to exercise significant influence over education. That foray, the National Defense Education Act, primarily aimed to improve capacity in science and engineering at the college level. And the act had a clear connection to a constitutionally explicit federal responsibility: national defense.

Only in the mid-1960s, under President Lyndon Johnson’s Great Society, did Washington completely break with the Constitution by enacting a K–12 law untethered to explicit defense needs. The Elementary and Secondary Education Act (ESEA), enacted in 1965, sought, primarily, to provide compensatory funding to districts serving low-income populations, not to exercise authority over states and districts. What was discovered over the course of about two decades, however, was that funding alone made little difference in outcomes.

By the early 1980s, many people considered the American education system to be failing. As a result, the federal role began to morph from one focused on funding to one focused on control made possible by attaching coercive rules to federal dollars. The Reagan administration—which at first strove to eliminate the cabinet-level U.S. Department of Education that had just been created in 1979—published the report *A Nation at Risk* in 1983 with a Sputnik-like effect. It intoned, “If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war.” The administration’s second education secretary, William Bennett, became a major personality to whom the media and public looked for guidance on education issues, and the 1988 reauthorization

of the ESEA for the first time called on states and districts to demonstrate academic achievement. The era of “standards and accountability” had begun, and it arguably reached its apex with the 2002 ESEA reauthorization, the No Child Left Behind Act (NCLB).

NCLB asserted enormous control over the shape and functioning of K–12 education, requiring that all schools adhere to uniform state standards, be held accountable by aligned standardized tests, and bring all students (including numerous subsets based on race and other group identities) to full “proficiency” by the end of the 2013–2014 school year. Schools were punished if any group failed to make “adequate yearly progress” toward that full-proficiency goal.

Over time, parents and others came to greatly dislike the law’s strictures and its emphasis on standardized testing, and irritation evolved into disgust with the “Race to the Top” program. Among other things, that program essentially required states to use the Common Core national curriculum standards and one of just two federally funded, Core-aligned tests, to compete for a share of a \$4 billion pool of funding. The program also called for greater data collection on students and teacher evaluations based on students’ test scores. In addition, the Obama administration started to offer NCLB waivers in exchange for states’ adopting administration-selected policies. Those centralizing efforts united opposition on the left and right against Washington, the new “national school board.”

The end result is the latest iteration of the ESEA, the Every Student Succeeds Act (ESSA), which President Barack Obama signed in December 2015. The ESSA removed some onerous provisions of NCLB, Race to the Top, and NCLB waivers, especially “adequate yearly progress,” coercion to adopt the Common Core, and mandatory use of standardized test scores in teacher evaluations. Still, it is too controlling, continuing the requirements that states have uniform standards and tests, that almost all students in grades 3 through 8 take those tests, that all high school students take at least one standardized assessment, and that test results be a part of school accountability evaluations. It also still required that states submit detailed school improvement plans to Washington for approval.

## **Outcomes**

What have we gotten from federal spending and control? First, it is very difficult—perhaps impossible—to fully separate the effects of federal policy from numerous other variables that affect academic achievement. Those variables include state policies, local policies, students’ family lives, attitudes toward education, and more. Thus, we cannot say definitively that federal policy caused something to happen or not happen. Nevertheless, the evidence

suggests that federal K–12 interventions have been largely ineffectual and almost certainly not worth the money expended on them. Note that this failure does not include interventions by federal courts, which have often been necessary to enforce the Fourteenth Amendment’s equal protection requirements against state and district discrimination.

Historically, the evidence is powerful that neither government provision of schools nor compulsory attendance was needed for most people to educate their children. Numerous historians have noted that white Americans (blacks were often prohibited by law from receiving an education) had very high rates of literacy before there was significant provision of “common schools,” and very large percentages of Americans were sending their children to school before attendance was compulsory. People valued education and did not appear to need government provision, which largely *followed* widespread education.

To assess learning in the modern era, the most consistent national measure we have is the National Assessment of Educational Progress (NAEP) long-term trend assessment. The assessment is given to a nationally representative sample of students—but without stakes attached and, thus, insulated against “gaming”—which has remained largely consistent since the 1970s. There was a long lag in administration of the tests, but a new one occurred for 9- and 13-year-olds in 2020, before the onset of the COVID-19 pandemic. Unfortunately, the most important group for assessing the “final products” of the education system—17-year-olds—was unable to take the exam before COVID-19 made administering it untenable.

It is difficult to pinpoint precisely the effect of federal education spending—the main thing Washington does—on NAEP results, and standardized tests scores are just one limited measure of educational success. But it is also the case that the federal government itself calls the NAEP the “Nation’s Report Card,” so it is valuable to see whether it indicates success.

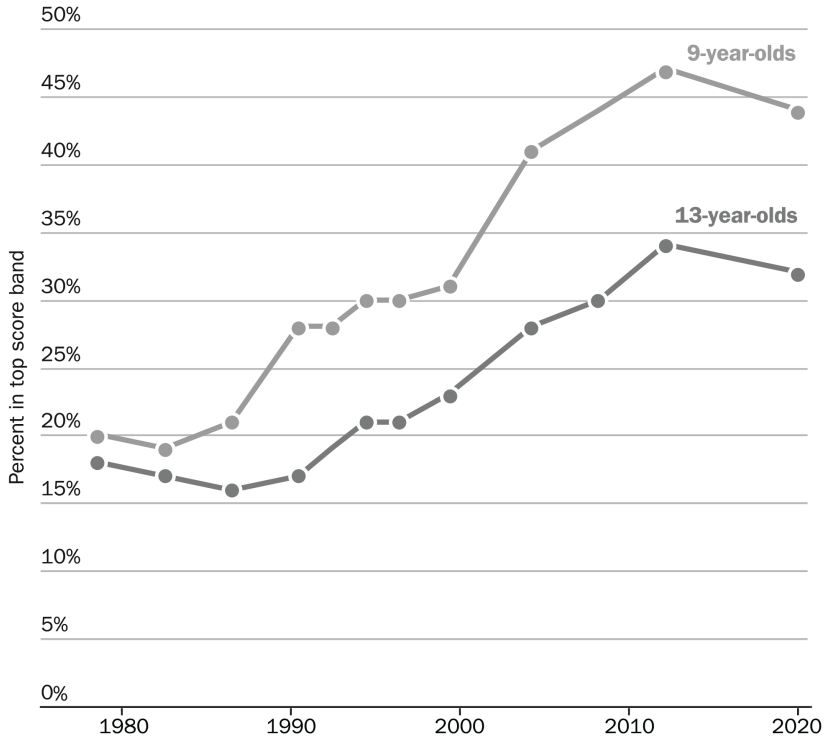
Looking at 9- and 13-year-olds, there has been improvement over the course of the past several decades. First looking at math (Figure 1), both age groups have seen increases in the share of students hitting the top score bands (250 or higher for 9-year-olds and 300 for 13-year-olds). Indeed, the share more than doubled for 9-year-olds from beginning to end and came close to doubling for 13-year-olds.

Reading for the same age group has seen much less impressive growth. As Figure 2 shows, 9-year-olds saw a rise from 16 to just 22 percent scoring at the highest level, and a similarly low trajectory for 13-year-olds.

Looking at 17-year-olds over the decades, achievement is almost completely flat, even dropping. Because the long-term-trend NAEP has not been administered to 17-year-olds since 2012, it is valuable also to look at scores for 12th

Figure 1

**Change in NAEP math results for 9- and 13-year-olds**



Source: U.S. Department of Education, National Center for Educational Statistics, National Assessment of Educational Progress, <http://nces.ed.gov/nationsreportcard>.

Note: NAEP = National Assessment of Educational Progress.

graders on the main NAEP, which covers fewer decades and is not intended to be consistent for a long period, but nonetheless suggests trends for more recent years.

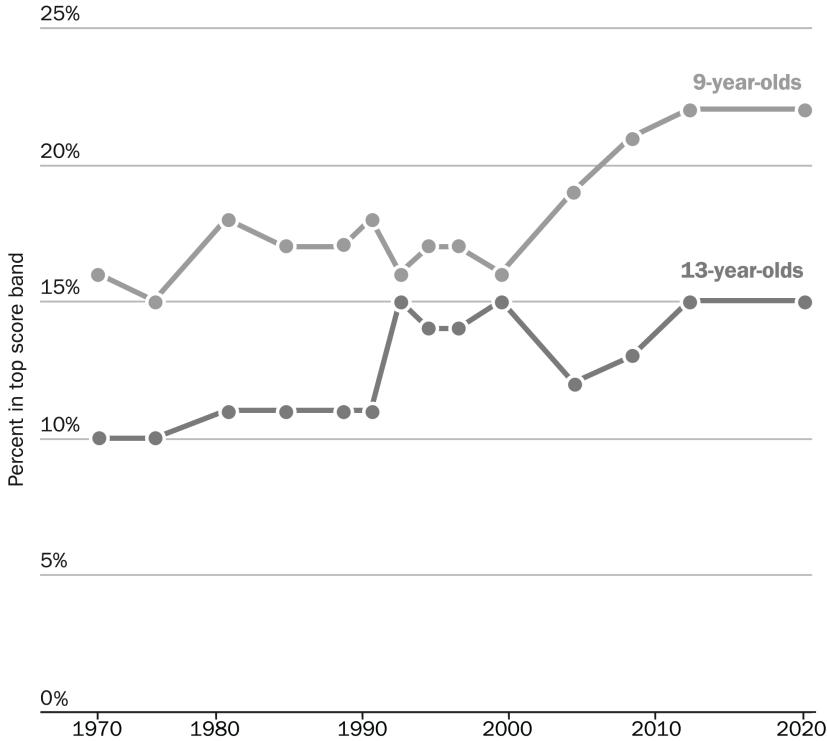
Starting with the long-term trend math and reading scores (Figure 3), the share of students scoring in the top band has been in the single digits since the 1970s; in the case of reading, it actually dropped by a percentage point between the beginning and end of the period.

Finally, Figure 4 shows shares of students reaching “proficient” on the main NAEP. (The long-term-trend NAEP does not have a “proficient” rating.) Again, the results are flat or slightly declining, although we only have five points of math data.

Aside from math for 9-year-olds and 13-year-olds, results have been pretty stagnant, and, most concerning, even dropping in reading for the “final products” of the education system. Perhaps this is a result of declines in spending. After all, it is common to hear complaints that public schools are underfunded.

Figure 2

**Change in NAEP reading results for 9- and 13-year-olds**



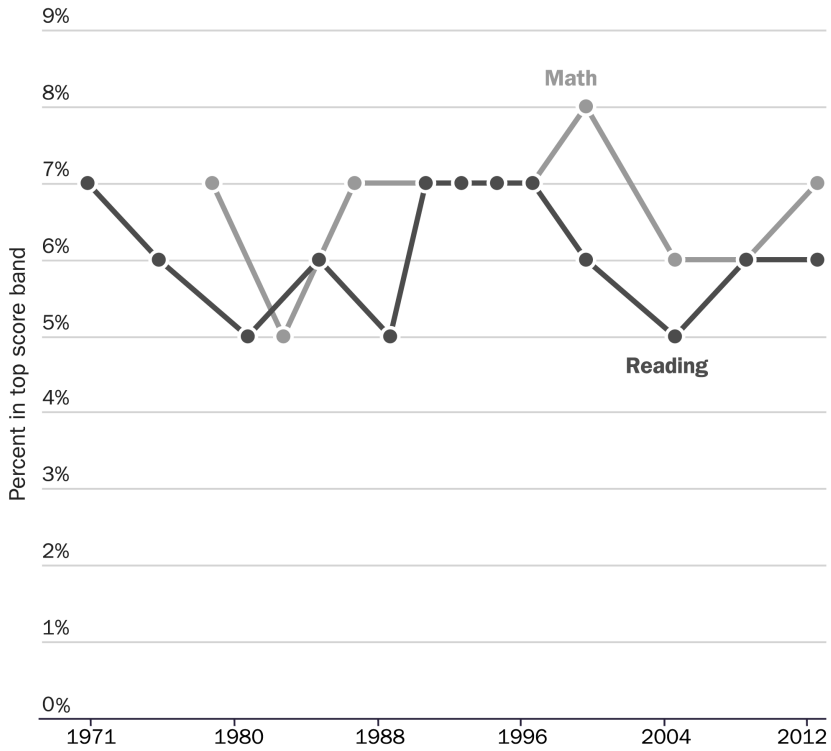
Source: U.S. Department of Education, National Center for Educational Statistics, National Assessment of Educational Progress, <http://nces.ed.gov/nationsreportcard>.  
 Note: NAEP = National Assessment of Educational Progress.

Spending does not appear to be the problem, at least in terms of growth. First, as Figure 5 shows, inflation-adjusted federal spending on a per pupil basis has grown appreciably over the period of NAEP examinations, more than doubling, although it has fluctuated. Overall, growth is much steeper than increases in top-performer shares, save for 9-year-old math.

General stagnation does not seem to be a product of overall spending, either. As seen in Figure 6, that has more than doubled for public schools since the early 1970s. Indeed, it has grown faster than the federal component, seeing 143 percent growth versus 123 percent. It certainly appears that outcomes have not been nearly commensurate with spending. And achievement gets worse the older kids get, suggesting that the longer children are in the education system, the worse their performance.

Perhaps the problem is that life for children has become more difficult, and more funding is needed to compensate for problems such as poverty. Conditions associated with poverty are certainly problems for many children, but overall,

Figure 3  
**Change in NAEP results, long-term trend math and reading scores,  
 17-year-olds**

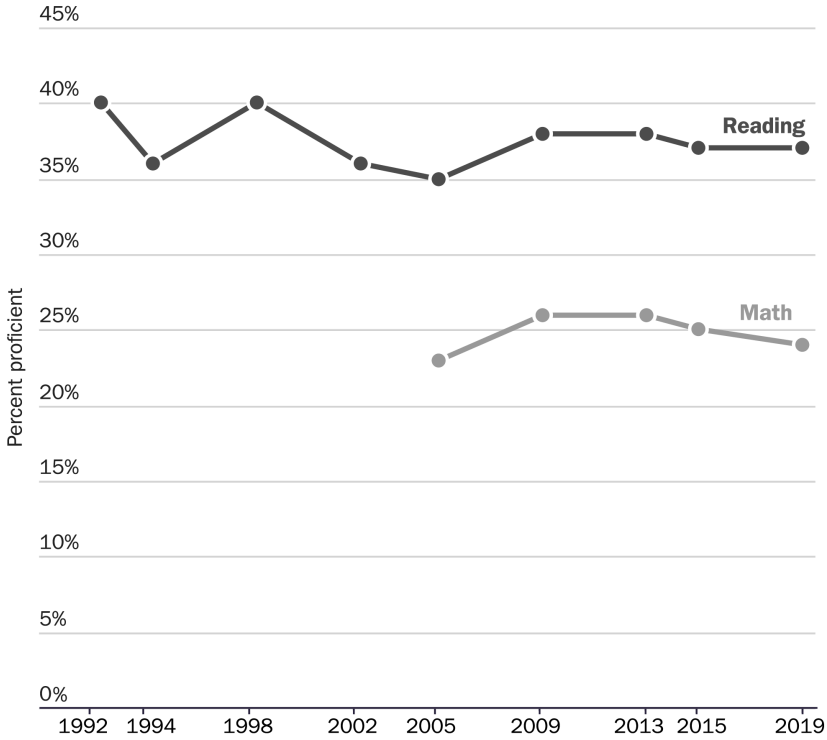


Source: U.S. Department of Education, National Center for Educational Statistics, National Assessment of Educational Progress, <http://nces.ed.gov/nationsreportcard>.  
 Note: NAEP = National Assessment of Educational Progress.

the period from 1970 to today has been one of markedly rising prosperity. As shown in Figure 7, real GDP per capita has well more than doubled, increasing 138 percent. That suggests that the average student is at least materially much better off today than in 1970, strongly militating against the possibility that we see little overall improvement despite major spending increases because kids are coming to schools in worse shape.

It is also true that the student demographic mix has changed appreciably since 1970, especially with a much larger share identifying as Hispanic, and a much smaller share as white. This change might explain some of the score stagnation, as traditionally higher-performing groups have become smaller, and lower-performing groups larger, shares of the overall population. But we have seen 12th-grade reading performance on the main NAEP for white students stagnate—46 percent at or above proficient in 1992, just 47 percent there in 2019. Math is better, but not great: white proficiency and above was 29

Figure 4  
**Change in NAEP proficient results, 17-year-olds**



Source: U.S. Department of Education, National Center for Educational Statistics, National Assessment of Educational Progress, <http://nces.ed.gov/nationsreportcard>.

Note: NAEP = National Assessment of Educational Progress.

percent in 2005 and 32 percent in 2019. And all groups should benefit from rising standards of living.

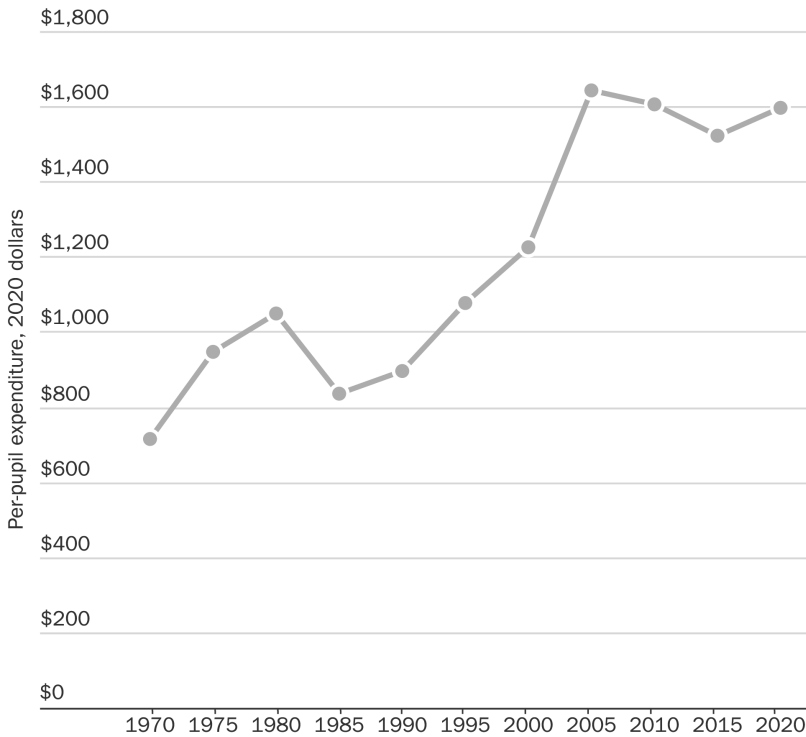
Americans appear to have seen little return for their tax money, federal or otherwise, at least when it comes to federal standardized test results. What they have gotten much more often has been micromanagement and standardization, peaking with NCLB and the Common Core.

### Recommendations

Moving away from the hyper-prescriptiveness of NCLB and the Common Core regime was something we do not see very often: the federal government giving some power back to states, districts, and people. It was a step in the right direction, but there are still many, many miles to travel to get the federal role where it should be. Eventually, outside of a few specific constitutionally authorized items, Washington should withdraw from K–12 schooling.



Figure 5  
**Change in federal spending per pupil, 2020 dollars**



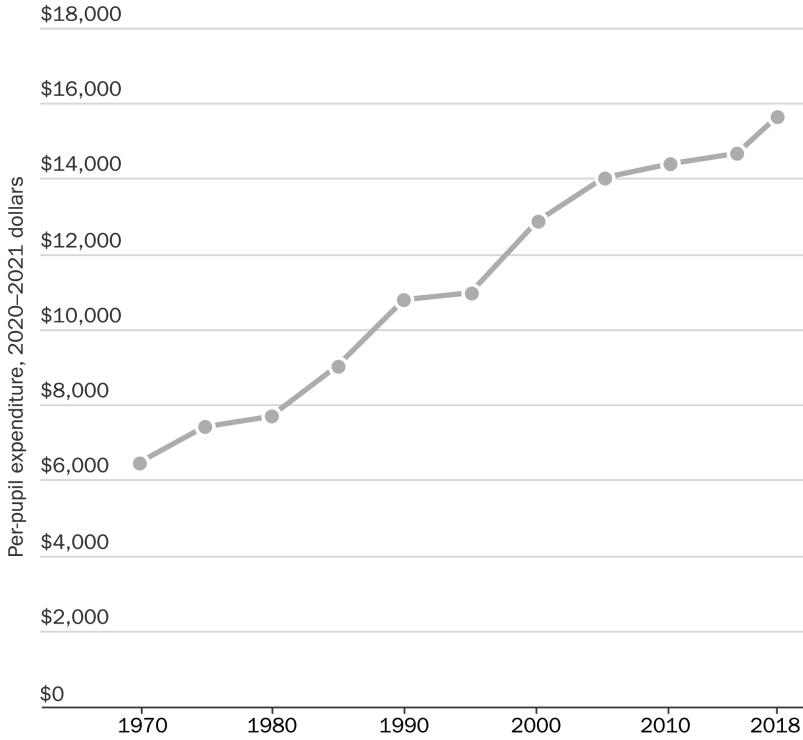
Sources: “Table 401.10. Federal Support and Estimated Federal Tax Expenditures for Education, by Category: Selected Fiscal Years, 1965 through 2020,” National Center for Education Statistics, Digest of Education Statistics, [https://nces.ed.gov/programs/digest/d20/tables/dt20\\_401.10.asp](https://nces.ed.gov/programs/digest/d20/tables/dt20_401.10.asp); “Table 105.30. Enrollment in Elementary, Secondary, and Degree-granting Postsecondary Institutions, by Level and Control of Institution: Selected Years, 1869–70 through Fall 2029,” National Center for Education Statistics, Digest of Education Statistics, [https://nces.ed.gov/programs/digest/d20/tables/dt20\\_105.30.asp](https://nces.ed.gov/programs/digest/d20/tables/dt20_105.30.asp); and Thomas D. Snyder, ed., *120 Years of American Education: A Statistical Portrait* (Washington: Center for Education Statistics, 1993), table 9, <https://nces.ed.gov/pubs93/93442.pdf>.

In the short term, Congress could make such changes to the ESSA as removing the uniform state math and reading/language arts curricular standards and test mandate, with flexibility for states to allow all districts to choose among multiple standards and tests. It could also reduce the grades required to take the tests from the current grades 3 through 8 and once in high school. Finally, it could decrease the share of students—currently 95 percent—required to take those tests.

Those are only minimal changes that are politically realistic in the short term. Ultimately, federal involvement in education—which has always been unconstitutional and has, over the past several decades, failed to demonstrate effectiveness—should be eliminated. That is, with the following exceptions:

Figure 6

**Change in total spending per public school pupil, 2020–2021 dollars**

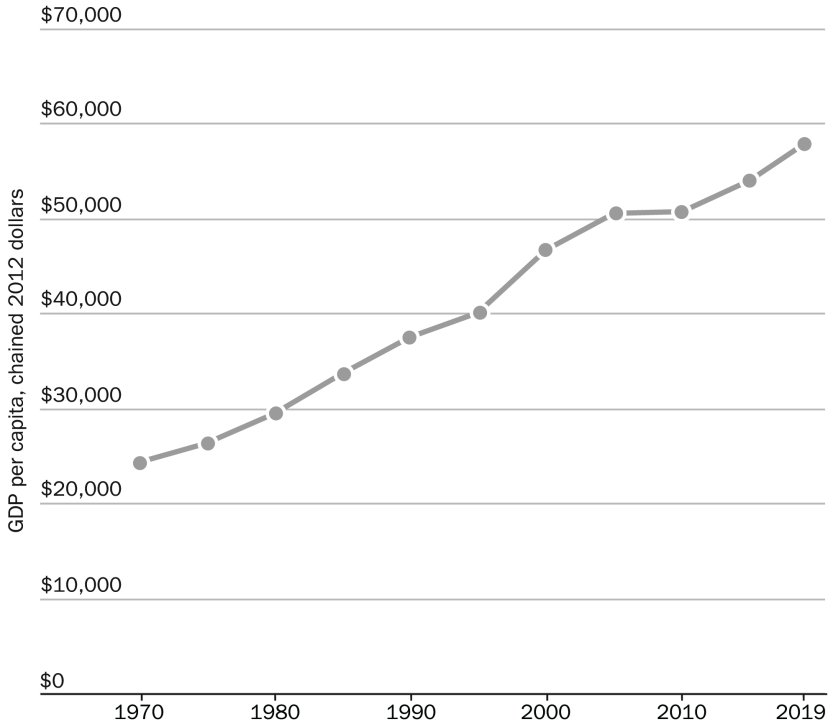


Source: “Table 236.55. Total and Current Expenditures per Pupil in Public Elementary and Secondary Schools: Selected Years, 1919–20 through 2018–19,” National Center for Education Statistics, Digest of Education Statistics, [https://nces.ed.gov/programs/digest/d21/tables/dt21\\_236.55.asp](https://nces.ed.gov/programs/digest/d21/tables/dt21_236.55.asp).

enforcing the Fourteenth Amendment in states or districts that clearly discriminate in their provision of education, exercising the federal government’s fully constitutional authority over the District of Columbia and education on military bases, and assisting with education on Indian reservations. Even those three exceptions call for a light touch. For instance, the Department of Education’s Office of Civil Rights has in the past been too aggressive in de facto making law, not just by regulation, but in *interpretation* of regulations in the form of “Dear Colleague” letters. It is also generally best for the people of Washington, DC, to exercise control over their own public schooling system, and of Indian tribes, as independent nations, to be self-governing.

Where the federal government can do something positive in DC, on reservations, and for the military, is providing school choice. Basically, attach federal funding to children instead of putting it directly into districts or public schools. Washington, DC, already has the Opportunity Scholarship Program, but it is too small at only \$17.5 million, and is constantly under threat of eradication.

Figure 7  
**Change in GDP per person, chained 2012 dollars**



Source: “Real Gross Domestic Product per Capita,” Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/A939RX0Q048SBEA>.

Note: GDP = gross domestic product.

It should be made permanent and given appreciably more funding. Similarly, funding for the Bureau of Indian Education and Department of Defense education funding could be “voucherized.”

One final concern: empowering parents to choose educational options is powerful, enabling the people who know their children best to select their learning environments and people with different norms and desires to avoid zero-sum battles. But that does not mean it is desirable for Washington to voucherize overall federal education spending or to create federal scholarship tax credits. Doing so would be unconstitutional, and would create a very real danger of national regulation of such things as standards and testing in private schools nationwide.

## Conclusion

The Constitution does not grant the federal government any authority to govern education, and for most of our history Washington stayed out of the

schoolhouse. Over the past several decades, unfortunately, that changed—first with funding, then with control. Pinpointing the effect—or lack thereof—of federal intervention on education is difficult. But the evidence strongly suggests that, while Washington has driven no lasting improvements, it has marginalized and angered parents and other citizens. The federal government should drop the reins and let people at the state level decide where and how to exercise education authority.

**Suggested Readings**

Alger, Vicki E. *Failure: The Federal Misedukation of America's Children*. Oakland, CA: Independent Institute, 2016.

Amselem, Mary Clare, et al. "Rightsizing Fed Ed: Principles for Reform and Practical Steps to Move in the Right Direction." Cato Institute Policy Analysis no. 891, May 4, 2020.

Arons, Stephen. *Short Route to Chaos: Conscience, Community, and the Re-Constitution of American Schooling*. Amherst: University of Massachusetts Press, 1997.

DeAngelis, Corey A., and Neal P. McCluskey, eds. *School Choice Myths: Setting the Record Straight on Education Freedom*. Washington: Cato Institute, 2020.

Glenn, Charles L. *The Myth of the Common School*. Amherst: University of Massachusetts Press, 1987.

McCluskey, Neal P. *Feds in the Classroom: How Big Government Corrupts, Cripples, and Compromises American Education*. Lanham, MD: Rowman & Littlefield, 2007.

—Prepared by Neal McCluskey