

EDUCATION OF A NEW DEPARTMENT

THE DEPARTMENT OF EDUCATION DOESN'T ORIGINATE POLICY, AND IT HAS LITTLE CHANCE OF STREAMLINING ADMINISTRATION OF FEDERAL PROGRAMS.

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Albert Shanker, president of the American Federation of Teachers, recently drew a big laugh at the AFT convention by saying, "I am sure that everyone here has noticed how much better things are and how much easier it is to teach now that we have a Department of Education. Life has been different."

Since President Carter signed the new Department into law last fall, we've had rumors of new appointments, reactions to appointments, scores of "transition task forces," scores of "transition task force reports," a new postage stamp, a new flag, lots of "get-togethers" with the Secretary over coffee, and even a few bashes. But outside of Washington, life hasn't been very different.

The Department had somewhat of an odd legislative history. The more the backers tried to explain why it was needed, the less support it got in the House of Representatives. Finally, despite an all-out push by a Democratic Administration in a two-thirds Democratic Congress and non-stop lobbying by the National Education Association, the bill passed by just four votes. It was seen, to say the least, as another piece of special interest legislation.

So, if this was a victory for the education lobby, or a segment of it, what are the fruits of that victory? What has Al Shanker missed?

Some had suggested the Department would have a symbolic, public relations value. Education deserved a national "voice," more "visibility," and so on. If you follow television

closely during the day, the first Secretary of Education Shirley Hufstедler has indeed been visible. She's been on many of the network shows, such as NBC's "Today" program. And she has said nice things about education. But does anyone believe this has had any sort of deep impact on the national mood about public education?

Beyond the mere symbolic, the Department as an organization can be looked at in two ways—as a policymaker and as an administrator. Some said the Department would provide national "leadership" in making education policy, although they were careful to never mention what sort of policies the Department might favor.

But to believe that a Department can make policy is to have a television view of the federal government. If you get all your information from television, you might, after all, believe the Executive Branch makes policy. The television cameras are allowed into the White House for the President to announce a new program or policy. And the cameras return when he has a bill to sign into law. They don't cover, however, what happens in between. For example, President Carter had, by one count, eight "economic game plans" during his first three and a half years in office. Each got plenty of coverage on the network news. What got much less coverage was that Congress tended to ignore most of what Carter had to say.

In all but foreign policy, Congress calls the shots. In education, Congress creates a new program, says how much money it will get, says exactly how it will be distributed, who will get it, and what they can and cannot spend it for. The Office of Education, or the Department of Education, simply sends out the checks.

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Secretary Hufstedler, after a distinguished career in the judiciary, came to Washington apparently unaware of this relationship between Congress and the Executive Branch. Some members of Congress have taken great pains to teach her the lesson. In April, Hufstedler signed off on four sets of seemingly innocuous regulations covering programs in arts education, "law-related education," Title IV-B, and the Education Appeal Board. Earlier, House Education and Labor Committee Chairman Carl Perkins had written the Department to recommend minor changes in the rules. The arts education rules, for example, required applicants to have a local advisory council. The Department staff thought this would be a good idea. Perkins didn't. He told the Department that if he thought an advisory council were a good idea, he would have written it into the law. Since he didn't, the Department had no business requiring it.

Hufstedler viewed the dispute as a matter of principle, which it was. She just didn't know what the principle was. Congress does not allow the bureaucracy to limit its authority. Hufstedler announced she would go ahead with the regulations as planned, and even got Attorney General Benjamin Civiletti to issue an opinion saying this was a matter for the Department, not Congress.

So, Perkins had Congress veto all four sets of regulations. Hufstedler even said she would defy the veto. But finally, after a blistering letter from the House Committee denouncing her "arrogance" and adding several threats, Hufstedler relented and agreed to change the regulations the way Perkins demanded. If Hufstedler had not given in, Congress was ready to simply cut off the funds for the programs and then rewrite law to specify every detail. Lesson number one.

In August, Hufstedler tried again, this time with the controversial "Lau" regulations. Since the Supreme Court decided in 1974 that non-English-speaking students were entitled to extra help in school, the federal government had been struggling with the question of just what was required. The best HEW could come up with was the so-called "Lau remedies," a series of memos and guidelines that were confusing and inconsistently ap-



Shirley Hufstedler

plied. Hufstедler, admirably, took on this hot potato.

But unfortunately, the proposed regulations required the use of bilingual education, a controversial and unproven means of helping children learn English. Hispanic groups have lobbied hard for bilingual education, which some Hispanics see as a way to preserve Spanish. Interestingly, the parents of the 1,800 Chinese students in San Francisco who brought the original Lau suit were seeking extra help for their children in English, not bilingual instruction in Chinese.

Most education groups reacted angrily to the proposed Lau regulations, saying the Department had "overstepped its bounds." Editorial writers in newspapers across the country denounced the regulations. Hufstедler would have none of this criticism. At press conferences and meetings, she brushed off suggestions that the regulations went too far. So, just three weeks after she announced them, the House attached an amendment to the Education Department appropriation which said no funds could be used to force any school district to use bilingual education. Lesson number two.

The Democrats in Congress who control education policy are disposed to expand and create new programs. They almost never will accept suggestions to cut back or eliminate a program. The Executive Branch can have an impact by suggesting new programs. But this depends, not on the Department, but on the White House. Presidents Nixon and Ford regularly put forth proposals to restructure education aid into a series of "block grants" to the states. And just as regularly, Congress absolutely ignored the suggestions.

In 1978, the White House suggested adding a new "concentration grant" fund to Title I of the Elementary and Secondary Education Act. It also suggested a Middle Income Student Assistance Act supposedly to aid middle-class college students. Both were enacted by Congress. Last year, before the Department came into being, Vice President Mondale's task force on youth unemployment proposed an expanded program which would add nearly \$1 billion in federal aid for high schools. Congress in the end will probably go

along with this. Still, it's important to remember these proposals originate at the White House. If you think the Department has its own policy making power, wait to see what education proposals come from a Republican Department of Education.

Then there's administration. When the Carter Administration ran into trouble promoting the Department as a new policymaker for education, it fell back on the idea that it would be a better administrator. Carter and Mondale said a separate Department would be more "efficient." At the White House ceremony where the enacting bill was signed into law, Carter said the new Department would "streamline the administration" of the programs. The word "streamline" had become a slogan of late, with no apparent meaning, like the words "detente" and "human rights." In 1976, Carter believed the way to "streamline" the government was to consolidate agencies and departments. In 1979, the way to streamline, he said, was to split up consolidated departments like HEW into separate departments.

If you're waiting for less paperwork, regulation, bureaucracy, or interference from Washington because of the new Department, don't hold your breath. The amount of regulation and paperwork has almost nothing to do with who or what is administering the programs—as Sen. Daniel Patrick Moynihan, among others, has pointed out. Rather, the amount of regulation is a product of the type of legislation.

Congress could have said in 1965 that it wanted to give federal aid for education at a rate of \$100 per child—period. No need for regulation, guidelines, state and local bureaucracies, or even paperwork. Just count up the kids and send out the checks.

Instead, it said—to take Title I of the Elementary and Secondary Education Act as an example—that it wanted to give aid only for the education of "disadvantaged children"—meaning poor ones. And it wanted to ensure that the new federal money was in no way mingled with state or local aid to education. That has required giant bureaucracies—federal, state, and local—as well as volumes of regulations and reams of paperwork. When the National Institute of Education studied Title I in 1977, it found one of the major problems to

be that school administrators, after 12 years, still did not understand the regulations. That should give you a hint about the complexity.

Through the years, educators have complained incessantly about the amount of regulation, recordkeeping, and paperwork associated with Title I. But as part of that same NIE study, a civil rights group—the Lawyers' Committee for Civil Rights Under the Law—was given the prime contract to analyze administration of Title I projects. As you might expect, they concluded that some local administrators were not seeing to it that every cent was spent solely for the benefit of "Title I children." So they recommended stricter regulations.

When the Senate subcommittee on education reauthorized the Title I law in 1978, it used a model bill conveniently drawn up by the Lawyers' Committee as the basis for its work. It called for, among other things, a stepped-up monitoring and enforcement campaign by state education agencies. The states must visit school districts every year checking on Title I expenditures. More detailed reports will be required to satisfy the state auditors. And the federal auditors will be looking over the shoulder of the state auditors. The new regulations implementing this part of the law will probably go into effect this fall. You can expect more record-keeping, more paperwork, and more bureaucrats.

If Title I were the only aid program, there would be enough paperwork to keep everyone busy. But over the past 20 years, new education programs have sprouted up like fast food franchises along the highway. To name a few—arts education, basic skills education, career education, community education, drug abuse education, environmental education, population education, bilingual education, metric education, and so on. The U.S. Office of Education used to count 134 different education programs, each with its own set of grant regulations, its own application, its own grant competition, and its own distribution network. The Education Department has no authority to eliminate a single one of these programs, to combine it with another, or to alter it in any way. So much for streamlining. ■

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