



Written by [Michael Tennant](#) on August 26, 2011

Education Secretary Makes Case for Abolishing His Department

During the course of the webcast, in which Duncan answered questions submitted via Twitter, the No Child Left Behind Act (NCLB) was raised. NCLB is the 2001 version of the Elementary and Secondary Education Act (ESEA) signed into law by President George W. Bush that imposes national standards on schools and measures schools' success in meeting those standards primarily via standardized testing. Its emphasis on testing and its lack of flexibility have caused consternation in state capitals and school districts across the country, especially since failure to meet the standards could mean a loss of federal money.



"Some people are saying the real lesson of No Child Left Behind is that Washington cannot run public education," said the moderator of the webcast, who then motioned for Duncan to respond to that statement.

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"Washington could never run public education," Duncan emphatically agreed, thereby contradicting at least 46 years of federal policy, beginning with President Lyndon B. Johnson's signing of ESEA in 1965 and continuing through the establishment of the Department of Education in 1979 and thence on to NCLB and sundry other laws and regulations.

"What we want to do is we want to be a good partner," the Secretary continued. "We want to reward courage, we want to reward excellence, we want to reward creativity, we want to hold folks accountable to a high bar, but education has always been and should be at the local level. And the best ideas, I've always said, in education are never going to come from me or frankly from anyone else in Washington. They're always going to come from great teachers, great principals at the local level."

In other words, the Department of Education and its head honcho, far from being on the leading edge of improving education, are nothing but dead weight — and massively expensive dead weight at that, with a budget of \$92.9 billion in fiscal 2010, nearly triple what it was when Bush took office. Why isn't Duncan handing in his resignation and demanding that his department be abolished?

The answer, of course, is that Duncan doesn't really believe that education is a matter for states and localities (or, better still, the [private sector](#)) at all. Though he agrees that NCLB is a heavy-handed imposition from Washington, Duncan isn't about to give up the control over local schools that comes with his position. "We want to hold [teachers and principals] accountable but give them lots more room to move and to do the right thing for the children in their community where they know best what those children and what the community need," he said. That is, Washington will retain control over local



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schools but disguise it with a fig leaf of faux flexibility.

Indeed, that is precisely what Duncan seeks to do with his proposal to grant NCLB waivers to states that believe they will be unable to meet what the *New York Times* called its “centerpiece requirement ... that 100 percent of students be proficient in math and reading by 2014.” Calling the law a “slow-motion train wreck,” Duncan offered to waive the requirements for certain states. Those states do not get off the hook that easily, however. While they may no longer have to meet NCLB’s requirements, says the *Times*, they will instead have to measure up to Duncan’s standards:

For a waiver to be approved, ... states would need to show that they were adopting higher standards under which high school students were “college- and career-ready” at graduation, were working to improve teacher effectiveness and evaluation systems based on student test scores and other measures, were overhauling the lowest-performing schools, and were adopting locally designed school accountability systems to replace No Child’s pass-fail system.

How’s that for not running public education from Washington?

States are already [preparing](#) to apply for the waivers, which provide them with a small amount of breathing room but still keep Washington firmly in control of education.

But the question of whether issuing such waivers is legal remains open. During the webcast Duncan maintained “that the Obama administration has the authority to grant those [waivers] without breaking any laws,” according to CNSNews.com. Unfortunately for Duncan, the matter is not nearly as open-and-shut as he implied. The question is not whether the executive branch has the authority to issue waivers — that has been legal since ESEA was first passed — but whether it can do so with strings attached, especially strings that substantially alter duly passed law. As the [New Republic](#) explained:

By mandating that only those states that commit to specific reforms ... will be entitled to receive the flexibility provided by waivers, the administration is attempting to overhaul NCLB behind Congress’s back. In other words, instead of waiting for Congress to change the way teachers are evaluated or schools are punished, Duncan is hoping to do it himself by forcing the states’ hands. As education policy expert Tom Loveless of the Brookings Institution puts it, “If states embrace the Obama education reform agenda, they get a waiver.” If they don’t, tough luck.

The administration’s decision represents an ingenious, and, according to Loveless, “unprecedented” way to get around a federal law. Jack Jennings, President of the Center on Education Policy and longtime House Committee on Education and Labor staffer, says though it “may be the right thing to do,” there’s a good chance Duncan and Obama are “overstepping their authority.” American Enterprise Institute education scholar Rick Hess goes even further, calling the plan unconstitutional and likening it to a future Republican president letting states opt out of the Affordable Health Care Act — but only on his terms.

Duncan’s proposal is unconstitutional for two reasons. First, it arrogates vast power to the executive branch: the power to change or even ignore laws the President doesn’t like. Second, since education is not one of the federal government’s enumerated powers and thus, as the 10th Amendment states explicitly, is “reserved to the states respectively, or to the people,” no branch of the federal government has any business whatsoever dictating education policy to states, localities, or individuals. That means also that Duncan’s department and his own position are unconstitutional and should be abolished.

Duncan is correct that Washington is a drag on the education system and that “the best ideas ... in education are never going to come from” Washington but from local schools. To show he means it,



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instead of merely substituting Obama's education benchmarks for Bush's and keeping a firm grip on local schools, Duncan should resign and ask for his department to be shuttered. By doing so he would contribute greatly to restoring constitutional governance — not to mention better schooling — in America.



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