

Levels of Authority
Affecting Public Preschool, Elementary and Secondary Schools
Prepared by Michael J. Lovett and James K. Martin
Updated January 2022

1. Federal Constitution, Laws and Regulations

The United States Constitution is silent on the issue of education. Rather, the 10th Amendment of the Constitution (1789) reads:

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.

In effect, this means that public education is a function left to each of the 50 states individually.

Then how does the federal government have influence over education?

1. Laws and regulations based on the Equal Protection Clause of the 14th Amendment to the Constitution (1868) which provides (in part): *"nor shall any State [...] deny to any person within its jurisdiction the equal protection of the laws."*
2. Programs and Services that are rooted in other sections of the Constitution; e.g., the school lunch program is overseen by the Department of Agriculture, and began in the 1930s as a way to stabilize food prices by absorbing farm surpluses, while at the same time providing lunch to millions of school children.
3. Programs which serve some national purpose, but are not required of the states. For example, states receive federal funds for some programs if they comply with federal regulations. Examples would be science education or development of student job and career skills.
4. Through revisions to the federal Elementary and Secondary Education Act, including a law entitled "No Child Left Behind" in 2002, and a revision entitled "Every Student Succeeds Act" in 2016, the federal government, as a condition for states to receive federal funds, has set annual testing requirements for all children grades 3 through 12 in reading and math. These laws have had significant ramifications on US education, some good -- like more public accountability, and some negative, like reductions in music, the

arts, elementary recess, and anything else that is not measured by required “high stakes” government testing. The actual tests differ by state and are administered by the states. There is some degree of national coordination through a voluntary set of standards called “Common Core” standards.

2. State Constitutions, Laws and Rules

Education is the responsibility of each of the states, in accord with their own state constitutions. For example, the State of Minnesota Constitution 1858 (Article 13, Section 1) reads:

Uniform system of public schools. *The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.*

3. Local School Board Policies

Each state other than Hawaii delegates responsibility for operating schools to local school boards. These boards are normally elected by the voters of a specific city, county, or established school district, and have wide latitude in managing schools as long as they comply with federal and state laws, regulations and rules.

4. Administrative Procedures and Leadership

Each school district hires or appoints a school superintendent who serves as the CEO (in some states this is an elected position) and provides leadership and is accountable to the school board, state and federal authorities and the public. The superintendent and other school leaders also have wide latitude in engaging the public, creating and maintaining a climate of high expectations and respect, and inspiring students and staff to excel. The superintendent and school leaders have authority to promulgate and implement administrative procedures to put school board policies into effect.

5. Collective Bargaining

In states where collective bargaining is permitted, those agreements ratified by school boards and employee groups, and officially recognized by the appropriate state agency, e.g., Minnesota State Bureau of Mediation Services, have the force and effect of law. The collective bargaining agreements, which are negotiated by the school districts and the employee organizations (unions) that represent groups of employees, govern employees’ wages, hours and other terms and conditions of employment. Disputes are subject to grievance provisions and procedures, typically

with an arbitrator serving as the final authority to resolve the dispute between the school district and the union when one arises.

Summary and Ramifications

In the United States, these five levels of authority all influence what and how children learn; what is most important; and how much money is spent on schools and school staff.

There is a balance between **equality of opportunity, local control, and efficiency**, three important values that may seem in tension with one another.

Because of these five levels of authority, and the fact that local control of schools is such a strong value, the nation's public schools tend to be slow to change, and to some degree are insulated from political issues, whether they arise at the state or federal level.

Private elementary and secondary schools

The first Amendment to the Constitution reads in part, "*Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof*." This is a major factor which results in very modest public funding going to private and parochial schools. Where public funds do go to private or religiously affiliated schools, it may be under state laws that provide support for functions such as textbooks and counseling services that do not-- and cannot-- have a religious purpose. Certain federal programs, such as Title 1 and special education services, are open to any qualifying schools and students, whether public or private.