



EDUCATION REGULATION

Introduction

With the strong, bipartisan passage by Congress early this year of legislation known as The No Child Left Behind Act (NCLB, a.k.a. the 2001 Reauthorization of the Elementary and Secondary Education Act of 1965), it could be said a new era of “regulation” of education has begun. The federal act is very specific and very stringent in how states are to improve education. Volumes have been written on NCLB, enough so that there are clearinghouses of information pertaining to it maintained by universities, the National Conference of State Legislatures, and other entities.

For the most part, however, not considering local school boards, “regulation” of education still is conducted primarily by just one entity in South Dakota, that being the state’s Department of Education and Cultural Affairs (DECA). Other groups could be said to have some sort of regulatory role, but they are often doing so in such a limited capacity as to make it questionable whether they could be construed to be “regulators.”

That said, arguably the most true, real “regulators” of education are the local school boards as it is their decisions that most directly affect students and the course of a school or district.

Department of Education and Cultural Affairs

South Dakota’s Department of Education and Cultural Affairs is established in SDCL Chapter 1-45 and was created in 1973 as part of the late Governor Dick Kneip’s reorganization of state government. It has been fine-tuned some since then, with perhaps the most significant change being the 1991 repeal of the Division of Higher Education during the late Governor George Mickelson’s second term.¹

SDCL 1-45-4 lists the several divisions that compose DECA and vests the leadership responsibilities in the secretary of the department:

The Department of Education and Cultural Affairs consists of the divisions of cultural affairs, workforce and career preparation, and education services and resources, and such other divisions and agencies as may be created by law, executive order or administrative action and placed within the department. Each division shall perform its prescribed functions, subject to the following provisions:

(1) The secretary of education and cultural affairs shall review and make recommendations concerning the

annual budget request of each division, and in the instance of the division of cultural affairs, each office of the division; and

(2) The secretary of education and cultural affairs may approve comprehensive education and cultural affairs plans for the department; and

(3) The secretary of education and cultural affairs shall perform any functions assigned to the secretary under federal law; and

(4) The secretary of education and cultural affairs shall perform the functions transferred from other agencies as specified in this chapter; and

(5) The secretary of education and cultural affairs shall perform other personnel, organization, staffing, directing, coordinating, and reporting functions as assigned by law or executive directives of the office of the Governor.

The above assign to the secretary certain functions as head of a state agency. Other statutes, however, assign to the secretary and the department at least an oversight role in the day-to-day lives of school districts. For example, since DECA distributes State Aid to Education money to the schools, the department has oversight over school financial affairs. DECA has the authority to promulgate rules for school financial reporting requirements, and what they must report to the state. DECA may declare a school district "fiscally delinquent" and may withhold \$100 a day from a school's State Aid until it is in compliance with submission of financial reports.

The secretary also is given the power in statute to approve reorganizations and consolidations of school districts and to issue, suspend, or revoke teaching certificates. DECA and the Board of Education determine education and experience qualifications that applicants must meet in order to be licensed to teach in South Dakota. The state Board of Education has the authority to define the number of hours in a school day, the number of hours in a term, and aspects of special education. While it is true that the Legislature has repealed hundreds of mandates on schools and school districts since 1995, DECA still is a vital partner in the day-to-day life of a school, as evidenced by the fact that DECA accredits schools so that they may exist.

The Federal Government

NCLB has meant a more active role in education than the federal government has taken in many years. Congress and President George W. Bush have made it a priority that schools in the United States are going to improve and that they keep adequate records of progress henceforth. NCLB requires states to conduct significant amounts of assessment of certain grades in key curricular areas, and that they establish data-handling systems and methods to begin to amass data from myriad topics of measurement and criteria. States that fail to comply with federal law stand to lose millions of dollars of education funding. What will be even more noticed at the local level, however, is that state education agencies such as DECA will be required to either operate or close poor-performing schools or at least give parents the means to send their children to better-performing schools. The relative newness of NCLB has kept its full effects from becoming real so far, though.

The Board Of Regents

The Board of Regents (BoR) governs the six state-supported universities, the South Dakota School for the Deaf, and the South Dakota School for the Blind and Visually Impaired (the last two also being known as “the special schools”). BoR is also the state’s “postsecondary review entity,” however, which comes into play for matters of student financial aid. The BoR’s colleges of education work with DECA in attempting to meet the state’s needs for teachers. The special schools work in an outreach capacity with the local school districts to serve needs of the vision and hearing impaired. Otherwise, the BoR does not “regulate” education, at least at the K-12 level. It has responsibilities for tracking some student data, but those are within the postsecondary realm.

Other Non-Local Entities

Other entities may have some sway or regulatory sort of capacity over a certain aspect of a school’s operations, but it would be a reach to say they “regulate education.” For example, certain workplace rules of the federal Occupational Safety and Health Administration apply to schools, but this would not be a regulation of education any more than the speed limits posted on streets outside the school building. Teachers may belong to the South Dakota Education Association (SDEA), but that organization does not regulate education. The same is true for the Associated School Boards (ASBSD) and the South Dakota School Administrators Association (SDSA). On the other hand, SDEA, ASBSD, and SDSA all testify before the Legislature when legislation is being considered that will affect their members. These organizations also

cooperate with ad hoc groups such as university or gubernatorial task forces addressing special issues, but none of them could be said to “regulate education.”

Probably the closest any outside group comes to regulating education is the work done by the South Dakota High School Activities Association. They have statutory authority to regulate extra-curricular activities by rules of conduct and setting the seasons, but again it is a bit of a reach to say they “regulate education.” However, schools do not have to belong to the SDHSAA.

Local Boards of Education

Arguably, the local school boards are the biggest “regulators” of education. It is the decisions made locally that most often chart the course for a district and its schools or have the most effect on students and their success in the education process. It is also local decisions that probably have the most effect on teachers. For example, local pay scales determine ability to recruit or retain quality teachers that are the utmost necessity to providing quality education. The state and federal governments may issue standards or even mandates, but the real tone of a district’s education system is set locally. Local boards also get to have input on decisions by state or federal entities, either directly, through their associations, or through legislators.

Conclusion

While much of education policy does, in fact, come from the state and federal government levels, it is likely that just as much “regulation” of education is done locally. Long-time Speaker of the U.S. House of Representatives Tip O’Neill

used to say, "All politics is local politics."
Perhaps the most important education

regulation, if there really is such a thing,
is local.

¹The Board of Regents, even though a constitutionally created entity, was once attached to DECA as a division, though by the early 1990s really only existed there budgetarily. In 1991 the Legislature repealed that statutory relationship, and the Board of Regents has existed as a totally separate budget entity since state Fiscal Year 1992.

This issue memorandum was written by Mark Zickrick, Principal Fiscal Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
