

Legal Framework for Education in Oregon

by Hannah Lai, Senior Deputy Legislative Counsel

Federal law

- Federal Constitution. The federal constitution does not mention education, which makes education the responsibility of the states. Additionally, the U.S. Supreme Court has held that education is not a fundamental right under the federal constitution.¹ The lack of specific authority for Congress related to education means that the only authority under which Congress may enact federal educational law is through the Spending Clause (conditioning federal moneys on compliance, as with ESSA) or the 14th Amendment (requiring equal protection guarantees, as with IDEA).
- Every Student Succeeds Act (ESSA). The federal government has historically played a minor role in education. This role was increased with the passage of No Child Left Behind (NCLB) in 2001. After 14 years, the federal government once again retreated from its role in education by passing the Every Student Succeeds Act in 2015. ESSA retains much of the accountability measures of NCLB, but allows the states to determine how to measure and enforce the accountability. Under ESSA, states must submit education plans to the U.S. Department of Education for approval. Oregon’s plan was approved last August, and it was one of the first state plans approved.
- Individuals with Disabilities Education Act (IDEA). Requires that students with a disability be provided a Free Appropriate Public Education (FAPE).
- Other federal laws that apply include Civil Rights Laws (prohibiting discrimination in education) , ADA (Americans with Disabilities Act; addressing accessibility to education), FERPA (Family Educational Rights and Privacy Act; relating to educational records), National School Lunch Act (school lunches, breakfasts, snacks).

State Constitution

Many of the constitutional sections involving education relate to the Common School Fund and bonding authority for capital construction, but there are three relevant sections to the committee.

- Article VIII, section 3,² which requires the establishment of a uniform and general system of common schools. The courts have held that the constitutional obligations under this section are met if the state “requires and provides for a minimum of educational opportunities in the district and permits the districts to exercise local control over what they desire, and can furnish, over the minimum.”³ Additionally, the section requires “only a uniform prescribed course of study, not equality of educational opportunities or resources from school district to school

¹ *San Antonio Independent School District v. Rodriguez*, 411 U.S.1 (1973).

² The section provides “The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools.”

³ *Olsen v. State*, 276 Or. 9, 27 (1976).

district.”⁴ This section is not violated if a minimum of educational opportunities are provided, even if those opportunities do not meet the quality goals established by law.⁵

- Article VIII, section 8,⁶ which was adopted by voters through an initiative petition in 2000. This section requires the Legislative Assembly to appropriate a sum of money sufficient to ensure that the state’s system of public education meets quality goals established by law, or to produce a report explaining why insufficient amounts were appropriated.⁷ The Oregon Supreme Court has found that this section is satisfied if a report is produced.⁸ The recommended funding levels are determined by the Quality Education Commission,⁹ which uses the Quality Education Model (QEM) to determine funding adequacy.¹⁰
- Article VIII, section 1,¹¹ which establishes the office of Superintendent of Public Instruction. The office had been filled by a statewide election since 1874. In 2011, the legislature enacted legislation to allow the Governor to be superintendent. In 2012, the last elected superintendent stepped down and the Governor became superintendent.

State agencies

- State Board of Education (Department of Education). The State Board of Education establishes the policy for the administration and operation of public schools in this state. The board consists of seven members and two ex officio members.¹² The Department of Education functions under the direction and control of the board and the Superintendent of Public Instruction.¹³ While the Superintendent of Public Instruction is the administrative head of the department,¹⁴ most of those functions have been delegated to the Deputy Superintendent of Public Instruction¹⁵ (Colt Gill). The department includes the Early Learning Division¹⁶ and the Youth Development Division.¹⁷

⁴ *Withers v. State of Oregon*, 133 Or. App. 377, 384 (1995).

⁵ *Pendleton School District 16R v. State of Oregon*, 345 Or. 596, 616 (2009).

⁶ Subsection (1) of that section provides “The Legislative Assembly shall appropriate in each biennium a sum of money sufficient to ensure that the state’s system of public education meets quality goals established by law, and publish a report that either demonstrates the appropriation is sufficient, or identifies the reasons for the insufficiency, its extent, and its impact on the ability of the state’s system of public education to meet those goals.

⁷ The report for 2017-2019 biennium is available at <https://olis.leg.state.or.us/liz/201711/Downloads/CommitteeMeetingDocument/139217>. The gap for the 2017-2019 biennium is \$1.77 billion.

⁸ *Pendleton* at 611.

⁹ ORS 171.857.

¹⁰ See ORS 327.506.

¹¹ The section provides “The Governor shall be superintendent of public instruction, and his powers, and duties in that capacity shall be such as may be prescribed by law; but after the term of five years from the adoption of this Constitution, it shall be competent for the Legislative Assembly to provide by law for the election of a superintendent, to provide for his compensation, and prescribe his powers and duties.”

¹² ORS 326.021.

¹³ ORS 326.111.

¹⁴ *Id.*

¹⁵ ORS 326.300.

¹⁶ ORS 326.430.

¹⁷ ORS 417.852.

- Chief Education Office.¹⁸ The Chief Education Office is established for the purpose of “coordinating with education stakeholders to establish a unified public education system that ensures that all public school students in this state reach the educational goals established for this state.”¹⁹ The administrative head of the office is the Chief Education Officer (Lindsey Capps).²⁰ The office is scheduled to sunset on June 30, 2019,²¹ with most of its functions related to strategic investments, longitudinal data and educator development being transferred to the Department of Education.
- Teacher Standards and Practices Commission.²² The commission is an independent agency (not part of the Department of Education) that is responsible for the licensing of teachers and administrators. In addition, the commission develops professional standards, regulates professional conduct, and approves educator preparation programs in this state. The commission consists of 17 members.²³ The administrative head of the commission is the executive officer (Anthony Rosilez).

Local control

- Education service districts.²⁴ There are 19 education service districts in Oregon, roughly determined based on county lines.²⁵ ESDs take advantage of economies of scale and tend to emphasize the provision of services related to special education, business operations, and technology. A school district may choose to withdraw from its ESD and receive the school district’s proportionate share of moneys that had been appropriated to the ESD. A school district that is part of an ESD or that has withdrawn from an ESD may contract with the ESD for any services provided by the ESD.
- School districts. There are 197 school districts in Oregon. They are governed by locally-elected state boards.
- Public charter schools. Public charter schools are publicly-funded schools that are operated independently of school districts.²⁶ Charter schools were first authorized in 1999, and there are more than 100 public charter schools in this state, including four sponsored by the State Board of Education. Funding for public charter schools is passed through the sponsors of the schools, and the sponsors are authorized to retain a portion of those moneys based on statutory requirements and agreements made in the charter.

¹⁸ Statutes establishing the Chief Education Office are printed at the beginning of ORS chapter 326.

¹⁹ Section 1, chapter 519, Oregon Laws 2011.

²⁰ Section 2, chapter 519, Oregon Laws 2011.

²¹ Section 72, chapter 774, Oregon Laws 2015.

²² Statutes related to the Teacher Standards and Practices Commission are primarily located in ORS chapter 342.

²³ ORS 342.350.

²⁴ Statutes related to education service districts are primarily located in ORS chapter 334.

²⁵ ORS 334.013 established the education service districts, though some districts have merged.

²⁶ Statutes related to public charter schools are primarily located in ORS chapter 338.