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*Appendix A. U.S. Governmental and Educational Systems***The U.S. System of Government**

In the United States, certain powers and responsibilities are vested in the federal government and others belong to the states and local government. According to the Tenth Amendment to the U.S. Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States." Powers delegated to the federal government include providing for the national defense, making treaties, regulating interstate commerce, minting money, levying tariffs, and guaranteeing educational opportunities. Consequently, most of the laws that impact people's daily lives are the purview of state and local governments. For example, states issue driver's licenses, establish speed limits, regulate gambling and set education standards, and local governments provide police and fire protection, establish land use zones (e.g. residential, commercial, industrial), issue business licenses and provide public schools.

State governments generally resemble the federal government. There are, however, significant differences that impact education policies and the type of educational services provided. Like the federal government, states have three branches: executive (governor), legislative (state assemblies) and judicial (state Supreme Courts and state courts). At the federal level, the President and Vice President are elected; other members of the administration, however, are appointed with the approval of the Congress, specifically, the Senate. As with the federal government, state executives are elected, but unlike the Federal government, other members of a state's executive branch may be elected as well. So it is possible to have a governor from one political party with a particular political philosophy while the state's top education official is from another party with an opposing political philosophy.

The processes by which laws are enacted also may differ. At the Federal level, legislation is introduced into the two houses of Congress (House of Representatives and Senate) by a member or members of each respective house. If passed by Congress, the legislation is signed or vetoed by the President. The President may also take no action (pocket veto); in which case, after a specified period of time, it becomes law without the President's signature. The process is similar in the fifty states; however, some states have a referendum system for enacting laws. Under the referendum system, if a set number of registered voters sign a petition of support, a proposed piece of legislation is placed on the general ballot, bypassing the state assembly. If voted for by a majority of the people casting a ballot, it becomes law. Some of the issues that are voted on are mundane while others have great bearing on the quality of life for citizens of that state.

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Two such referendum issues that were voted on and passed in the state of Oregon considered prohibiting using dogs for bear hunting and allowing doctor-assisted suicide. This referendum process has had a great impact on educational policy concerning language education.

The judiciary is the third branch of the U.S. political system. There are three principle layers to the judicial system: the federal courts, state courts and local courts. Depending upon the state, there may be several layers of local courts. At the top is the U.S. Supreme Court. Below it are the 12 U.S. Courts of Appeals and the 94 U.S. District Courts. Like the federal judiciary, state courts typically have three levels as well: state Supreme Court, state courts of appeal, and trial courts. State and local courts handle most criminal matters, marital disputes, commercial contracts, and other day-to-day matters. The federal courts, in contrast, have power to decide only those cases over which the Constitution gives them authority and cases for which state courts are inappropriate or might be suspected of partiality. Examples of such cases are controversies between two or more states, between a state and citizens of another state, and between citizens of different states. Federal courts also serve as the courts of appeal after the state courts of appeal and state Supreme Courts. The case of the Arizona English Only law mentioned in this report⁴⁶ is an example. An employee of the state of Arizona had sued the state over the Arizona English Only law. The case made its way to the state Supreme Court, which ruled against the state of Arizona. The state appealed the decision to the U.S. Supreme Court, which chose not to hear the appeal due to a technicality, thus sending the case back to the state Supreme Court (English-only Debate, 1996)

This federal system has resulted in a decentralized system of government in which power and responsibilities are distributed among federal, state and local governments, with the states and local authorities most involved in people's daily lives. The ways in which laws are created and enacted have become of critical importance, in that, referendum systems in some states allow laws to be enacted without going through the legislative process in which issues are, theoretically, researched, debated and negotiated by state legislatures. When a bill goes through the legislative process, "cooler heads" are likely to prevail, and extreme measures are moderated or eliminated. With the availability of the referendum, issues that would not make it through the legislative process but are promoted by well financed and highly organized single-interest groups may be successful. This has been the case with some language and educational laws. When laws are passed that negatively affect individuals or groups of people, they are often contested in the courts. As a result, the courts have come to play a significant role in determining laws and policies.

⁴⁶See the section entitled *Language Policy in the United States*.

The U. S. System of Education⁴⁷

The United States has a heritage of local control of schools. This heritage is partially due to geographic factors, but it is also by design. In accordance with the Tenth Amendment to the Constitution, the federal government has no authority to establish a national education system, nor do federal agencies ordinarily prescribe policy or curriculum for local schools. Such decisions are made at the state or local level. Consequently, the system of education in the United States is highly decentralized, and laws governing the structure and content of educational programs may vary greatly from state to state, and district to district. Some of these laws are prescriptive; others are broad enough to allow local school districts considerable flexibility in the way they operate their schools.

The role of the federal government in education has been one of broad leadership without control. It is the legal responsibility of federal authorities to safeguard the right of every citizen to gain equal access to free public institutions and equal opportunity in the pursuit of learning. While fulfilling this responsibility, the federal government also attempts to improve the quality of education through the funding of research, direct aid to students, and the dissemination of knowledge about teaching and learning. To achieve these goals, the Congress has enacted legislation establishing a variety of funded programs, most, though not all, administered by the U.S. Department of Education (U.S. Department of Education, 1998a).

Over the years, state legislatures have enacted laws to govern the organization and operation of elementary and secondary schools. In most states, policies and requirements are determined by a state board of education and carried out under the leadership of a chief state school officer (the title varies with the state) and a staff of professional educators in a state department of education.

Typically, state regulations for public schools cover the length of the school day and school year, graduation requirements, standards for teacher certification, and other procedures involved in providing public education. About one half of the states have some sort of mandatory approval process for private schools that results in a license, accreditation, or registration for the school. A few states require that all private school teachers be certified by the state before they can teach in a private school. However, requirements vary from state to state, as does the manner in which such requirements are enforced.

With the exception of Hawaii, each state is divided into local administrative districts. Generally, local school districts are governed by a board of education, usually composed of five to seven members, who have either

⁴⁷Unless otherwise cited, the information presented here is drawn from the U.S. Department of Education, 1998c.

been appointed by other governmental officials or elected by citizens who live within the district. The local board operates the public school system through the superintendent and the district staff.

The district school board and the superintendent of schools have a broad range of duties and responsibilities, including joint preparation of school budgets, hiring teachers and other personnel, and providing and maintaining school buildings. In addition, school boards and the superintendent of schools often have considerable latitude within state guidelines to determine curriculum. Their duties also include enacting regulations to govern the operation of schools. Such regulations must conform to state law (U.S. Department of Education, 1998a).

It is worth noting that, in keeping with the heritage of local control of schools, some districts violate state and federal laws,³ either openly or through subversion. A current example is that of the situation in California where Proposition 227 was recently passed eliminating bilingual education in public schools. In open defiance of the new state law, the San Francisco Board of Education voted unanimously to continue bilingual programs (Colvin & Smith, 1998, para. 22). They were able to do so because the Department of Education's Office of Civil Rights has a history of requiring that non-English speaking students be taught in their own language when there are a certain number of such students at a given grade level. A provision of the new California law allows, upon the request of the parents, the issuance of waivers exempting their children from English-only classes. Several California school districts are attempting to subvert the intent of the creators of the law by informing parents of non-English speaking children of the waiver provision and by providing them with waiver forms. School districts are also developing schedules and bussing plans to insure that students of a particular native language are present in sufficient concentration to meet the threshold number (Asimov, 1998, para. 16).

In summary, the system of education in the United States is reflective of the decentralized nature of the nation's political system. At the federal level, the primary responsibility is to ensure that rights are protected and that all citizens have equal opportunity. Particularly in the area of education, the federal government influences local policies and practices through grants and through enforcement of civil rights legislation, as interpreted by the courts. It is the responsibility of the states to enact laws governing standards, certification and organizational procedures, while local authorities are responsible for the day-to-day operations of the schools. Finally, there is a profound heritage of local control of schools that strongly influences and inhibits large-scale national education movements and programs.

³ An example of schools violating federal laws occurs in cases of public schools that continue to conduct school wide prayer in violation of the Supreme Court's interpretation of the establishment clause of the First Amendment to the Constitution.

Appendix B. Improving America's Schools Act of 1994, Title VII

"PART E—GENERAL PROVISIONS

"SEC. 7501. DEFINITIONS; REGULATIONS.

"Except as otherwise provided, for purposes of this title—

"(8) Limited english proficiency and limited english proficient.—The terms 'limited English proficiency' and 'limited English proficient', when used with reference to an individual, mean an individual—

"(A) who—

"(i) was not born in the United States or whose native language is a language other than English and comes from an environment where a language other than English is dominant; or

"(ii) is a Native American or Alaska Native or who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency; or

"(iii) is migratory and whose native language is other than English and comes from an environment where a language other than English is dominant; and

"(B) who has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny such individual the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.