Education Policy Brief August 2012

CURRICULUM STANDARDS AND ASSESSMENT

Common Core State Standards—Smarter Balanced Assessment Consortium

OLRGC
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What should students be expected to know upon completion of high school? How should schools ensure that students achieve this knowledge? These are questions that parents, legislators, and education leaders confront daily. This policy brief gives background information on a recent policy discussion in the education sector: the Common Core State Standards and the Smarter Balanced Assessment Consortium. The brief aims to inform legislators with basic facts and background information to assist in their decision-making process and answer key legal questions regarding Utah's obligations and commitments.

BACKGROUND AND DEFINITIONS

Core Standards
Core curriculum standards are concepts, knowledge, and skills that students need to understand and master as they move through their schooling that prepare them for further education or careers after high school graduation.

Standards are not curriculum. Utah law requires the State Board of Education (State Board) to establish core curriculum standards.

UTAH CODE Subsection 53A-1-402.6(2):
The board shall:
(a) identify the basic knowledge, skills, and competencies each student is expected to acquire or master as the student advances through the public education system; and
(b) align the core curriculum standards and tests administered under the Utah Performance Assessment Systems for Students (U-PASS) with each other.[1]

The State Board adopts curriculum standards in a range of subjects including math, English language arts, driver education, social studies, science, and fine arts. These core standards are revised every five to seven years to assure that students learn what they need to know to be successful after public school.[2]

The example below is a summary of a few of the many concepts and skills in mathematics and language arts that Utah students would be expected to know by completion of the 5th grade.[3]

EXAMPLE: 5TH GRADE STANDARDS

Utah Core Math Standard
Number and operations - fractions
1. Use equivalent fractions as a strategy to add and subtract fractions.
2. Apply and extend previous understandings of multiplication and division to multiply and divide fractions.

Utah Core Language Standard
Conventions of Standard English
1. Demonstrate command of the conventions of standard English grammar and usage when writing or speaking.
   a. Explain the function of conjunctions, prepositions, and interjections in general and their function in particular sentences.
   b. Form and use the perfect verb tenses (e.g. I had walked; I have walked; I will have walked).
   c. Use verb tense to convey various times, sequences, states, and conditions.
   d. Recognize and correct inappropriate shifts in verb tense.
   e. Use correlative conjunctions (e.g., either/or, neither/nor).

Curriculum
Curriculum is an educational plan; it sets forth ***how*** and ***what*** is used to teach the standards. It may include content, teaching materials, and methods. Strategies are recommended at the state level, but are not mandated. Utah law requires local school boards to establish curriculum, which may vary from district to district and be tailored to local needs.

UTAH CODE Subsections 53A-1-402.6(4)–(5):
(4) Local school boards shall design their school programs, that are supported by generally accepted scientific standards of evidence, to focus on the core curriculum standards with the expectation that each program will enhance or help achieve mastery of the core curriculum standards.
(5) Except as provided in Section 53A-13-101, each school may select instructional materials and methods of teaching, that are supported by generally accepted scientific standards of evidence, that it considers most appropriate to meet core curriculum standards.[4]

Common Core State Standards
The Common Core State Standards (Common Core) are a set of math and English language arts curriculum standards adopted by 45 states. The Common Core was developed by a state-led effort known as the Common Core State Standards Initiative, coordinated by the National Governors Association for Best Practices and the Council of Chief State School Officers. Educators, administrators, researchers, parents, community groups, and private companies all reviewed the standards and provided feedback during the process.

Included within the common core are college-and-career readiness standards, which address what students are expected to learn when they have graduated from high school, and grade level standards for kindergarten through grade 12, which address expectations for elementary through high school.[5] After several Legislative and State Board public meetings, the State Board adopted the Common Core as Utah's core standards for mathematics and English/language arts in August 2010[6].

Assessment
In order to determine if students are learning and understanding the standards through the teaching of the curriculum, schools administer assessments. Utah law requires the State Board to develop an assessment method to uniformly test students in basic skills courses. In the 2012 General Session, the Legislature passed H.B. 15, Statewide Adaptive Testing, which enacted a new requirement to test Utah's core standards in math and English/language arts with a computer adaptive assessment system.

Smarter Balanced Assessment Consortium
Authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), the federal government provided funding to two consortia of states to develop assessments aligned with the Common Core. Utah joined the Smarter Balanced Assessment Consortium (SBAC), a consortium of 27 states created to develop an adaptive assessment system.

On August 3, 2012, the Utah State Board of Education voted to exit SBAC.[7] The Board's August 3, 2012 Meeting Summary states that the Board voted to end its membership in SBAC in order to avoid a conflict of interest related to the Board's request for proposals for an adaptive assessment system required under 2012 General Session H.B. 15, Statewide Adaptive Testing.[8]

Utah's Waiver from the Elementary and Secondary Education Act (ESEA)
On September 23, 2011, the U.S. Secretary of Education invited states to request flexibility regarding specific requirements of the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act of 2001.[9] States were given the opportunity to replace the federal accountability system with an accountability system developed by the state. Under the federal accountability system, schools were annually evaluated based on meeting targets for the percentage of students scoring proficient on English language arts and mathematics assessments with the goal of all students attaining proficiency by 2014.

To obtain flexibility, the U.S. Department of Education (Department) requires a state to adopt college- and career-ready standards and develop and administer high quality assessments tied to those standards. The State Board of Education submitted a flexibility request and received approval on June 29, 2012. In its flexibility request, Utah noted its adoption of the Common Core and its membership in the Smarter Balanced Assessment Consortium (SBAC) to fulfill the Department's requirements for flexibility.

Obligations and Commitments

Legal Questions

Is Utah required to keep the Common Core as its state standards?
No. Because a memorandum of agreement signed by Utah to participate in the development of the Common Core does not require nor commit Utah to adopting the Common Core, and because Utah did not receive federal money related to its adoption of the Common Core, Utah is not required to keep the Common Core as its state standards.

Common Core Memorandum of Agreement

In May, 2009, Governor Jon Huntsman and Superintendent Patti Harrington signed a Memorandum of Agreement to participate in the development of the Common Core (Utah's Common Core MOA).[10] Utah's Common Core MOA does not require nor commit Utah to adopting the Common Core. Participation in the Common Core States Standards Initiative (the Common Core Initiative) was "voluntary for states." The purpose of the MOA was to set up a process for the development of the Common Core Initiative and commit states to "the process and structure as described" in the MOA.[11] Utah's Common Core MOA does not commit Utah to maintaining the Common Core.

Congress's Spending Power

The federal government may only require a state to comply with a public education mandate if the mandate is a condition of the receipt of money accepted by the state through a federal program.[12] If a state were to fail to comply with the conditions of a grant, the federal government could require the state to refund the money as a penalty for non-compliance.

While Congress has no authority to regulate activities for a general welfare purpose, it may tax and spend "for the general welfare."[13] According to United States Supreme Court jurisprudence, Congress may not directly regulate certain interests that traditionally belong to the states, such as education. Congress may, however, indirectly regulate traditionally local interests by conditioning a state's receipt of federal money on the state meeting certain conditions.[14]

There is a limit to Congress's ability to coerce a state to act by granting or withholding federal funds. The United States Supreme Court has noted the possibility that a given set of federal conditions to a state's participation in a federal spending program could be so onerous as to rise to a point where "pressure turns into compulsion," regardless of whether Congress has sought the consent of the states as part of the federal program.

In *South Dakota v. Dole*,[15] South Dakota challenged a grant of federal funding for roads that required South Dakota to raise its minimum drinking age to 21 or lose 5% of the state's ongoing federal transportation funding. The Court recognized that a circumstance could exist where the conditions placed on receipt of the federal money were so extreme that they amounted to coercion of the states. In *Dole*, however, the Court ruled in favor of the federal government, finding that a loss of 5% of ongoing transportation funding was minimal and that the state's argument that it was "coercion [was] shown to be more rhetoric than fact." Despite the Court's specific holding in *Dole*, the case left open the possibility that a future grant program offered to the states by Congress could be struck down if the grant conditions were so onerous that a court could determine that they amounted to "coercion."

Can Utah change the Common Core?
Most likely yes, Utah may change or substitute portions of the Common Core. Utah's Common Core MOA does not require nor commit Utah to adopting the Common Core but, by the terms of the MOA, allows Utah to add 15% on top of the Common Core: "States that choose to align their standards to the common core standards agree to ensure that the common core represents at least 85% of the state's standards in English language arts and mathematics."[16] The Common Core State Standards Initiative defines a state's adoption of the Common Core standards to mean that the state has accepted 100 percent of the standards word for word.[17]

Although the Common Core State Standards Initiative has asked Common Core States to adopt the Common Core Standards in their entirety, based on the information published by the Common Core State Standards Initiative and Utah's Common Core Memorandum of Agreement, it is unclear what would happen if Utah changed or substituted portions of the Common Core. The Common Core State Standards Initiative license grant states:

> The NGA Center for Best Practices (NGA Center) and the Council of Chief State School Officers (CCSSO) hereby grant a

> limited, non-exclusive, royalty-free license to copy, publish, distribute, and display the Common Core State Standards *for purposes that support the Common Core State Standards Initiative* (emphasis added). These uses may involve the Common Core State Standards as a whole or selected excerpts or portions.[18]

The license grant allows Utah to use the Common Core in whole or in portions "for purposes that support the Common Core State Standards Initiative."[19] If Utah amends the Common Core standards significantly, it is uncertain whether NGA and CCSSO would consider the changes or substitutions to be supportive of the Common Core State Standards Initiative.

The State Board of Education received a report during the Board's August 3, 2012 meeting, from Gene Wilholt, Executive Director of the Council of Chief State School Officers, regarding a Common Core state's ability to revise its Common Core based standards. According to a summary of the Board's Aug 3rd meeting, there is no "core police" that will stop or prohibit Utah from amending the Common Core standards in excess of the 15% allowed by the Common Core State Standards Initiative.[20] According to the Board's Meeting Summary, "Wilhoit said the Utah State Board of Education, along with all other states, are free to add to the standards to meet a state's individual need and encouraged all states to look at those needs."[21]

For practical purposes, even if Utah has the legal right to amend the Common Core by more than an additional 15% added to the top, it risks losing benefits a state gains when it adopts the Common Core. If Utah amends its core standards to make them significantly different from the Common Core, Utah may not be able to accurately compare its students' performance to the performance of students in other Common Core states. Also, Utah may not be able to take advantage of products and materials developed for the Common Core states, which may be more cost effective. Legally Utah is likely free to amend its core standards significantly beyond the 15% added to the top. Doing so, however, could cause Utah to lose certain benefits of being a Common Core state.

Is Utah required to give student-identifying data to the federal government or other states because of the Common Core or SBAC?

No. Neither Utah's adoption of the Common Core nor its participation in SBAC require Utah or its school districts and charter schools (LEAs) to share data or report student information. Utah school districts and charter schools are required to report certain aggregated (non-identifying) student information pursuant to certain federal programs,[22] but both of the largest federal public education programs explicitly prohibit the reporting of student identifying information to the federal government.[23] Utah will have to comply with the same federal reporting requirements whether it continues to use its current standards based on the Common Core or if Utah adopts other core standards created exclusively for Utah.

Does Utah's ESEA Flexibility Waiver require Utah to keep the Common Core or remain in SBAC?

No. A state is not required to adopt the Common Core nor participate in an assessment consortium (such as SBAC) to obtain flexibility from the current ESEA requirements.[24] However, as part of its application for ESEA flexibility, Utah made assurances to the U.S. Department of Education regarding its current incorporation of the Common Core into its core standards and Utah's membership in SBAC.[25] Although Utah's application for flexibility made goals and assurances related to its status as a Common Core state and membership in SBAC, Utah could adopt standards other than the Common Core or withdraw from SBAC with three options: (1) Utah could petition the Department to allow it to amend or change its approved flexibility request; (2) Utah could re-apply for the ESEA flexibility waiver with different college-and-career ready standards or assessments; or (3) Utah could comply with the current ESEA provisions without the flexibility. Although the ESEA flexibility waiver has been granted for two years, a state may amend its request:

> The Department encourages Utah to continuously evaluate the effectiveness of the plans and other elements of its ESEA flexibility request as it proceeds with implementation, and to make necessary changes to address any challenges that it identifies. . . . If Utah wishes to make changes to its ESEA flexibility request, Utah must submit those changes to the Department as early as feasible for the Department's review and approval.[26]

After the changes are submitted to the Department, the changes could be approved or the Secretary could decide to terminate Utah's waiver for non-compliance with the ESEA flexibility waiver. If the waiver is terminated, Utah and its school districts and charter schools (LEAs) would be required to comply with the current provisions of ESEA without the flexibility. If the Secretary terminates the waiver, "Utah and its LEAs must immediately resume complying with the requirements of current [ESEA] law."[27] At that point Utah could re-apply for ESEA flexibility with the new standards or simply comply with current ESEA provisions without flexibility.

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[1] UTAH CODE ANN. § 53A-1-402.6 (2012).
[2] BRENDA HALES, UTAH STATE OFFICE OF EDUC., IMPLEMENTING UTAH'S CORE STANDARDS IN READING/LANGUAGE ARTS AND MATHEMATICS: COSTS (2012)
[3] *Common Core Standards for Mathematics*, COMMON CORE STATE STANDARDS INITIATIVE, http://www.corestandards.org/assets/CCSSI_Math%20Standards.pdf (last visited Aug. 14, 2012); *Common Core Standards for English Language Arts & Literacy in History/Social Studies, Science, and Technical Subjects*, COMMON CORE STATE STANDARDS INITIATIVE, http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf (last visited Aug. 14, 2012).
[4] UTAH CODE ANN. § 53A-1-402.6 (2012).
[5] *Process*, COMMON CORE STATE STANDARDS INITIATIVE, http://www.corestandards.org/about-the-standards/process (last visited August 7, 2012).
[6] According to the official minutes of each entity, in addition to several 2009 meetings, in 2010, the State Board of Education (Board) discussed the Common Core at its February 5, March 5, and May 7 meetings; adopted the Common Core on first reading at its June 4 meeting; and adopted the Common Core on final reading at its August 6, 2010 meeting. In a joint meeting with the State Board of Regents on June 25, 2010, the Board discussed the Common Core. The Legislature's Education Interim Committee discussed the Common Core at its June 17, 2009 meeting.
[7] *Board Meeting Summary*, UTAH STATE OFFICE OF EDUC. (Aug. 3, 2012), http://www.schools.utah.gov/board/Meetings/Summary.aspx.
[8] *Id.*
[9] Letter from Arne Duncan, U.S. Sec'y of Educ.,to Chief State School Officers (September 23, 2011), *available at* http://www2.ed.gov/policy/gen/guid/secletter/110923.html.
[10] Memorandum of Agreement between The Council of Chief State School Officers and The National Governors Association for Center for Best Practices, and the State of Utah regarding Common Core Standards (May 2009) (signed by Governor John Huntsman and Superintendent Patti Harrington).
[11] *Id.*
[12] *See* South Dakota v. Dole, 483 U.S. 203 (1987).
[13] U.S. v. Butler, 297 U.S. 1, 66 (1936).
[14] *See Dole*, 483 U.S. at 212.
[15] 483 U.S. 203 (1987).
[16] Memorandum of Agreement between The Council of Chief State School Officers and The National Governors Association for Center for Best Practices, and the State of Utah regarding Common Core Standards (May 2009) (signed by Governor John Huntsman and Superintendent Patti Harrington).
[17] *See* COMMON CORE STATE STANDARDS INITIATIVE, BACKGROUND ON THE INITIATIVE (2010); COMMON CORE STATE STANDARDS INITIATIVE, POWERPOINT—MARCH 2010.
[18] *Public License*, COMMON CORE STATE STANDARDS INITIATIVE, http://www.corestandards.org/public-license (last visited Aug. 1, 2012).
[19] *Id.*
[20] *Board Meeting Summary*, UTAH STATE OFFICE OF EDUC. (Aug. 3, 2012), http://www.schools.utah.gov/board/Meetings/Summary.aspx.
[21] *Id.*
[22] Under the Elementary and Secondary Education Act (ESEA) and the Individuals with Disabilities Education Act (IDEA), Utah school districts and charter schools are required to report certain aggregated student information.
[23] *See* provisions of the Individuals with Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1142 (2004), codified at 20 U.S.C. § 1416(b)(2)(C)(iii)(2006) ("The State shall not report to the public or the Secretary [of the U.S. Department of Education] any information on performance that would result in the disclosure of personally identifiable information about individual children. . . .").
[24] U.S. DEP'T OF EDUC., ESEA FLEXIBILITY REVIEW GUIDANCE 6 (2012).
[25] *See* UTAH BD. OF EDUC., UTAH ESEA FLEXIBILITY REQUEST 34 (2012).
[26] Letter from Deborah S. Delisle, Assistant U.S. Sec'y for Elementary & Secondary Educ., to Hon. Larry K. Shumway, Utah Superintendent of Pub. Instruction (July 9, 2012), at 3.
[27] *Id.* at 4.

After the changes are submitted to the Department, the changes could be approved or the Secretary could decide to terminate Utah's waiver for non-compliance with the ESEA flexibility waiver. If the waiver is terminated, Utah and its school districts and charter schools (LEAs) would be required to comply with the current provisions of ESEA without the flexibility. If the Secretary terminates the waiver, "Utah and its LEAs must immediately resume complying with the requirements of current [ESEA] law."[27] At that point Utah could re-apply for ESEA flexibility with the new standards or simply comply with current ESEA provisions without flexibility.

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[19] *Id.*
[20] *Board Meeting Summary*, UTAH STATE OFFICE OF EDUC. (Aug. 3, 2012), http://www.schools.utah.gov/board/Meetings/Summary.aspx.
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[22] Under the Elementary and Secondary Education Act (ESEA) and the Individuals with Disabilities Education Act (IDEA), Utah school districts and charter schools are required to report certain aggregated student information.
[23] *See* provisions of the Individuals with Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1142 (2004), codified at 20 U.S.C. § 1416(b)(2)(C)(iii)(2006) ("The State shall not report to the public or the Secretary [of the U.S. Department of Education] any information on performance that would result in the disclosure of personally identifiable information about individual children. . . .").
[24] U.S. DEP'T OF EDUC., ESEA FLEXIBILITY REVIEW GUIDANCE 6 (2012).
[25] *See* UTAH BD. OF EDUC., UTAH ESEA FLEXIBILITY REQUEST 34 (2012).
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[27] *Id.* at 4.