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Research Brief

TO: Representative Wes Keller
FROM: Susan Haymes, Legislative Analyst
DATE: March 30, 2015
RE: State Regulations that Reference Federal Legislation
LRS Report 15.339

You asked about State regulations that implement federal law. Specifically, you wished to know when Alaska was first required to comply with federal rules for education and requested an account of the most recent promulgated State regulations related to the No Child Left Behind Act. Additionally, you asked for an estimate of the number of current state regulations that reference federal law.

Briefly, although Alaska has received federal funds for education since before Statehood, the passage of the Elementary and Secondary Education Act of 1965, largely established the role of the federal government in K-12 public education. The No Child Left Behind (NCLB) Act of 2001 substantially increased that involvement by placing numerous requirements on states that accepted federal funds. In 2013, after receiving a waiver from the NCLB Act, the Alaska State Board of Education and Early Development promulgated regulations to implement new school and district accountability measures. Through a search of the Alaska Administrative Code we identified 1,155 state regulations that reference the United States Code and/or the Code of Federal Regulations.¹

State Compliance with Federal Education Laws

Federal funds have been an important source of revenue for education in Alaska both before and after Statehood.² Not surprisingly, the provision of federal funds has come with certain requirements, which have increased markedly over time, especially since the enactment of the No Child Left Behind Act in 2001.

In 1958, Congress passed the National Defense Education Act (Public Law 85-864), which provided federal aid to the states to improve the teaching of science, mathematics, and foreign language instruction.³ In order to receive payments, states were required to submit a plan to the federal Commissioner of Education through their State educational agencies describing the projects for which the funds would be used. In 1959, the Alaska Legislature enacted AS 14.50.010, which allows the state commissioner of education, with the concurrence of the governor, to accept federal aid for education (ch 27 SLA 1959).

In 1965, Congress passed the Elementary and Secondary Education Act (ESEA), which became the primary source of federal aid to support K-12 education, and in particular programs for disadvantaged students (Public Law 89-10). The ESEA was

¹ The United States Code (U.S.C.) is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code of Federal Regulation (C.F.R.) is the codification of the general and permanent rules published in the Federal Register by federal departments and agencies.

² Dr. Nathaniel H. Cole, "A General History of Public School Finance in Alaska: Operating and Capital Costs," 1985. The report can be accessed through the Legislative Reference Library at <http://archives2.legis.state.ak.us/PublicImageServer.cgi?lib/8502000GENERAL%20HISTORY%20OF%20PUBLIC%20SCHOOL%20FINANCE%20IN%20ALASKA.pdf>.

³ The immediate catalyst for the legislation was the Soviet Union's launch of the Sputnik satellite in 1957, which was viewed at the time as a direct challenge to the scientific, technological, and military readiness of the United States. The legislation was primarily geared to provide funds for higher education, including a student loan program to increase enrollment in colleges and universities, particularly for science, mathematics, and foreign language careers.

enacted as part of President Lyndon Johnson's War on Poverty as a means to provide all children with equal access to a quality education. To receive funds, state education departments were required first to approve projects requested by local school districts and then to apply to the federal Commissioner of Education for grants to fund those projects. Once the money had been received, states were required to, among other things, report periodically to the Commissioner of Education on "objective measurements of educational achievement" to determine the effectiveness of the programs.⁴ According to Governor William Egan, the Alaska Department of Education moved quickly to implement programs that were authorized under the new law. In his address to the Fourth State Legislature on January 25, 1966, Governor Egan remarked as follows:

The far-reaching Elementary and Secondary Education Act passed by Congress last year will greatly assist the State to expand and improve its educational system, particularly in the rural areas. The Department of Education busily engaged itself in preparing required plans to insure utilization of this highly important and necessary assistance. It is anticipated that all programs authorized by the Act will be implemented this year.⁵

Since its initial passage, the ESEA has been reauthorized seven times, most notably in 1994 as the Improving America's School Act, and in 2001 as the No Child Left Behind (NCLB) Act. The 1994 reauthorization established key standards and accountability measures for state and local school districts that received federal funding under the ESEA.⁶ For example, states were required to establish standards within one year of receiving a grant, to develop state plans that described "adequate yearly progress" of schools and districts, and to develop a means to measure progress that was linked to performance on state assessments. The assessments were to be aligned with state content standards and had to be administered between grades 3 and 5, again between grades 6 and 9, and again between grades 10 and 12.⁷ As a result, in 1998, the Alaska Legislature enacted SB 36, which, among other things, established procedures to measure school and school district accountability (ch 83 SLA 1998).⁸ The State Board of Education subsequently adopted regulations to implement the accountability and assessment requirements in SB 36.⁹

The No Child Left Behind Act of 2001 led to a major expansion of the federal role in public K-12 education, primarily by increasing the accountability of public school systems and individual public schools as a means to ensure improvements in achievement outcomes of all students, especially to those who are disadvantaged. States were required to implement various standards-based assessments in reading, math, and science in all public schools and school districts; to make complex annual adequate yearly progress determinations for each public school and district; and to require teachers and aides to meet numerous qualification requirements.¹⁰ Subsequently, in 2004, the Alaska Legislature passed HB 405, which aligned Alaska's

⁴ ESEA of 1965, §§ 205(a)(5) and 206.

⁵ *Senate Journal*, Fourth Legislature, Second Session, January 25, 1966, Address by Governor Egan, p.8.

⁶ Public Law 103-382.

⁷ "Summary of the Improving America's School Act," *Education Week*, November 9, 1994, <http://www.edweek.org/ew/articles/1994/11/09/10asacht.h14.html>.

⁸ AS 14.03.120 – AS 14.03.123. More information on SB 36, which enacted the current public school funding formula, can be accessed at http://www.legis.state.ak.us/basis/get_bill.asp?session=20&bill=SB%20%2036.

⁹ 4 AAC 06.730- 4 AAC 06.739, 4 AAC 06.800 – 4 AAC 06.899.

¹⁰ Public Law 107-110. Wayne C. Riddle and Rebecca R. Skinner, "The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer," April 2007, Congressional Research Services Report. The report is available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1038&context=crs>.

testing and accountability system with federal requirements laid out in the NCLB Act.¹¹ Again, the Alaska Board of Education promulgated regulations to implement the new requirements, as per statutory authority under AS 14.50.010.

Since 2011, the U.S. Department of Education has allowed states to request waivers from certain provisions of the NCLB Act. In 2013, Alaska became the 37th state to receive a waiver. Under the waiver, states agree to do the following:

- Adopt standards in English/language arts and mathematics that prepare students for education and training after high school, often referred to as college-ready and career-ready standards;
- Devise their own systems for holding schools accountable for students' academic success, including student populations that traditionally underperform; and
- Require school districts to evaluate teachers and principals partially on student achievement.¹²

In exchange for meeting these requirements, states are allowed to opt out of NCLB's accountability system known as Adequate Yearly Progress. Consequently, in June 2013, the State Board of Education and Early Development adopted new school and district accountability regulations to replace the Adequate Yearly Progress system (4 AAC 06.812 – 4 AAC 06.899). The new system is called the Alaska School Performance Index (ASPI).¹³

The Alaska DEED is currently in the process of taking public comment on Alaska's draft ESEA Flexibility Waiver Renewal. The DEED plans to submit a renewal application in order to maintain the state accountability system based on the Alaska School Performance Index and to avoid returning to the "all or nothing" system for meeting Adequate Yearly Progress.¹⁴

State Regulations that Reference Federal Laws

We identified at least 1,155 state regulations that reference the United States Code (U.S.C.) and/or the Code of Federal Regulations (C.F.R.).¹⁵ The regulations of the Departments of Environmental Conservation (a total of 306); Health and Social Services (a total of 236); and Commerce, Community and Economic Development (a total of 184) contain the majority of references to federal laws and regulations. The Department of Environmental Conservation adopts by reference many of the requirements codified in federal environmental laws such as the Clean Air Act and the Clean Water Act. Many Health and Social Services regulations reference federal eligibility criteria for public assistance programs such as food stamps, heating assistance, chronic and acute medical assistance, and Medicaid. Numerous regulations of the Department of Commerce, Community and Economic Development cite federal laws and regulations that govern the banking, insurance, and securities industries. In Table 1 we show for each Title in the Alaska Administrative Code (AAC) the number of regulations that include a U.S.C. and/or C.F.R. citation.

¹¹ Committee minutes for HB 405 can be accessed at http://www.legis.state.ak.us/basis/get_minutes.asp?chamb=B&date1=010103&date2=032515&session=23&Root=HB405.

¹² Alaska DEED Press Release, "Alaska Receives No Child Left Behind Waiver," May 20, 2013. The press release can be accessed at http://education.alaska.gov/akaccountability/esea/waiver_release_may2013.pdf.

¹³ More information on the ASPI can be accessed at <http://education.alaska.gov/akaccountability/#c3gtabs-aspi>.

¹⁴ More information on the 2012 waiver application and the 2015 draft waiver application are available at <http://education.alaska.gov/akaccountability/#c3gtabs-esea>.

¹⁵ We searched the Alaska Administrative Code using the search terms "U.S.C." and "C.F.R."

Table 1: Alaska Administrative Code References to Federal Laws				
Title	Subject	Number of References		
		U.S.C.	C.F.R.	Total
2	Administration	19	14	33
3	Commerce, Community and Economic Development	146	38	184
4	Education and Early Development	21	26	47
5	Fish and Game	9	11	20
6	Governor's Office	24	2	26
7	Health and Social Services	140	96	236
8	Labor and Workforce Development	21	31	52
10	Military and Veterans Affairs	1	0	1
11	Natural Resources	15	9	24
12	Professional Regulations (Boards and Commissions)	12	11	23
13	Public Safety	7	7	14
15	Public Works	19	25	44
17	Revenue	78	11	89
18	Environmental Conservation	119	187	306
20	Miscellaneous Boards and Commissions	29	26	55
22	Corrections	1	0	1
Total		661	494	1155
Notes: The United States Code (U.S.C.) is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code of Federal Regulation (C.F.R.) is the codification of the general and permanent rules published in the Federal Register by federal departments and agencies. Sources: Alaska Administrative Code.				

We hope this is helpful. If you have questions or need additional information, please let us know.