



Utah State Board of Education Resolution No. 2015-1

A Resolution Calling for Legislation Preserving Utah's Educational State Sovereignty by Amending the Federal Elementary and Secondary Education Act

BE IT RESOLVED by the Utah State Board of Education:

WHEREAS, the Governor, Legislature, State Board of Education, educational leaders, educational groups, business leaders, and others recognize an imperative and immediate need to make changes to Utah's education system to provide a world-class education for its children; and

WHEREAS, both federal and state education leaders appear to be in agreement as to improving educational outcomes for children and that control of educational systems must be under the full control of the constitutionally established structures in the State of Utah; and

WHEREAS, the State of Utah has adopted rigorous educational standards, the Utah Core, assessment systems, SAGE, and teacher evaluation systems in good faith response to its obligations under federal law; and

WHEREAS, such changes may also include substantial and continuing changes, as Utah deems it advisable, to its teacher compensation system, educator evaluation system, teacher training, educational standards, assessment systems and other changes; and

WHEREAS, the Utah State Board of Education is, under the Utah Constitution, obligated and empowered to exercise general control and supervision over public schools in the State of Utah; and

WHEREAS, the federal Elementary and Secondary Education Act of 1965 was extensively amended in 2001 by the No Child Left Behind Act of 2001, 20 U.S.C. §§ 6301, et seq. [hereinafter "NCLB"]; and

WHEREAS, NCLB set a series of ambitious targets, including proficiency for all students in math and reading by 2014—targets which every state and almost every school have found nearly impossible to meet [hereinafter "the Federal Mandate"]; and

WHEREAS, as various states, including Utah, were at risk for failing to meet the Federal Mandate, in January 2012, the United States Department of Education [hereinafter "USED"] instituted a process whereby states could escape the consequences of failing the Federal Mandate by applying for a waiver under conditions set by USED; and

WHEREAS, some have argued that the waiver of the Federal Mandate used by the USED may be unconstitutional encroachments on the rights and prerogatives of the states in the United States' system of dual sovereignty, see, e.g., Derek Black, *Federalizing Education by Waiver*, 68 Vand. L. Rev. (forthcoming April 2015); and

WHEREAS, at the very least, the Federal Mandate coupled with the prescriptive requirements of NCLB waivers, a complex demand that potentially requires the abdication of state sovereignty in return for both federal mandates and federal funds; and

WHEREAS, Utah educational leaders have consistently asserted Utah's exclusive sovereignty over its public education system, including, without limitation, its curriculum, curricular standards, assessment system, teacher training, educator evaluation and all other aspects of its education system, assertions which the USED has unqualifiedly accepted; and

WHEREAS, on 22 August 2014, the Utah State Board of Education sought a waiver of certain onerous provisions of the NCLB from Secretary Duncan and USED (the "Utah Waiver"), recognizing Utah's refusal to abdicate its sovereignty, its refusal to accept federal control of state education, and its demand to receive its rightful portion of federal educational funds; and

WHEREAS, the Utah Waiver was expressly conditioned on Utah's "its absolute and exclusive right to modify, without negative effects with respect to its Waiver, its Utah Core Standards, SAGE testing, UCAS report card, and PEER teacher and principal evaluations[,] without approval of the U.S. Department of Education. The State Board further reserves its right to withdraw from the Waiver if the State Board finds that such Waiver violates Utah Code Ann. § 53A-1-402.6(7);" and

WHEREAS, this Utah Waiver, including the clear assertion of the State of Utah's full and unequivocal sovereignty over its educational system, in every detail, was accepted and approved without modification by the USED; and

WHEREAS, the State Board of Education may seek an NCLB "renewal" from the USED, with the same full and unequivocal assertion of absolute its sovereignty over its education system, in every detail; and

WHEREAS, conditional "waivers" and "renewals" offered by the USED are attractive only due to systemic and widely-recognized flaws in NCLB;

NOW, THEREFORE, BE IT RESOLVED that the State Board of Education continue to protect and preserve Utah's exclusive and unique sovereignty over its education system, in every detail, in the event that it seeks such "waivers" or "renewals" of NCLB; and

BE IT FURTHER RESOLVED that the State Board of Education firmly asserts that the sovereignty over Utah's educational system may not be compromised by a promise of federal funds; and

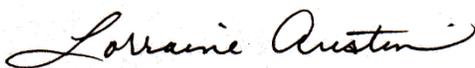
BE IT FURTHER RESOLVED that the State Board of Education of the State of Utah calls upon the Honorable Orrin Hatch, the Honorable Mike Lee, the Honorable Rob Bishop, the Honorable Chris Stewart, the Honorable Jason Chaffetz, and the Honorable Mia Love to sponsor or cosponsor legislation preserving Utah's educational state sovereignty by amending ESEA to resolve the impossible Federal Mandate of NCLB and to make such continuing conditional "waivers" or "renewals" unnecessary.

PASSED AND APPROVED THIS 8TH DAY OF JANUARY, 2015.



David L. Crandall
Board Chair

ATTEST:



Lorraine Austin
Board Secretary

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Governor Gary Herbert
Members, Utah Legislature