

## **E Pluribus Unum in Education?**

### **Governance Models for National Standards and Assessments: Looking Beyond the World of K-12 Schooling**

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Common Education Standards: Tackling the Long-Term Questions  
Thomas B. Fordham Institute  
June 2010



(Acknowledgments: The author would like to thank Checker Finn, Martha Derthick, Barry Rabe, and Paul Manna for their helpful feedback on earlier drafts of this paper.)

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## Introduction

The most striking feature of American governance is federalism—the allocation of constitutional authority across federal and state governments—and nowhere is the impact of federalism more profound than in education. Most other countries have unitary governments that centrally establish and administer a single national curriculum and tests for schools. In the U.S., our multi-level education governance structure and strong tradition of local control have made the creation of national standards and assessments much more complicated, both politically and administratively.<sup>1</sup> Yet persistent achievement gaps, greater mobility, the challenges of economic competitiveness, and the weak performance of U.S. students on international tests have amplified the call for some common goals and yardsticks for our children’s academic performance.

Most of the debate surrounding the present effort by the National Governors Association and the Council of Chief State School Officers to develop a “common core” of academic standards and parallel assessments (Common Core State Standards Initiative) has focused on substantive issues surrounding the standards and assessments themselves. Less attention has been paid to crucial questions surrounding the governance of such an effort over the longer term, particularly if the federal government’s role in it is to be limited. How might decision-making for a voluntary, state-based, but multi-state set of common standards in education be institutionalized? How can the interests of diverse governmental and nongovernmental actors operating at the national, state, and local levels be accommodated? What kind(s) of institutional structure(s) can ensure that national standards and assessments are rigorous, incentivize state participation, and create a stable governance and financing mechanism to sustain the venture over time? In particular, how

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<sup>1</sup> For more on the history of educational politics and policy-making in the U.S., see Patrick McGuinn’s *No Child Left Behind and the Transformation of Federal Education Policy, 1965-2005*.

can all of this be achieved with federal financial support but without the direct federal control that might imperil the entire undertaking?

The attempt to create common standards and assessments in education obliges us to revisit some longstanding debates about the capacity of the American intergovernmental system to adapt to new policy demands. Some observers remain skeptical that states have the political will or administrative capacity to develop and adopt higher policy standards on their own—particularly for their most disadvantaged and least politically powerful members—absent federal money/mandates/leadership driving the effort. Are there examples from outside of K-12 education of successful multi-state efforts to create common standards? What lessons can be gleaned from existing interstate ventures? This paper seeks to broaden the discussion around “common” standards and assessments in K-12 education by analyzing the long-term governance challenges such efforts pose and by identifying models whereby common standards and assessments have been created in other policy sectors.

### **Standards Governance**

There are four essential questions regarding the governance of common standards in any policy domain:

- Who writes the standards?
- By what means is their adoption induced or coerced?
- How should progress toward meeting the standards be assessed? and
- What consequences (if any) should be meted out to states that fail to meet the established standards?

That last question, though arguably the most challenging one politically, is beyond the scope of the current Common Core effort, and thus of this paper. We will try, however, to shed useful light on the first three.

Scholars have identified goals, measurement, and incentives as the core tools of intergovernmental management for performance.<sup>2</sup> But these tools have been deployed in a wide variety of ways by a large number of actors to produce a number of interesting models, so we'll refine our discussion by further breaking down these categories. There are two crucial dimensions to thinking about standards governance: the degree of centralization in setting the standards and the extent to which adoption of the standards is voluntary or mandatory. Broadly speaking, there are three different approaches to initiating standards: They can be written by private sector organizations (for-profit companies, nonprofit groups, or professional associations), states (acting collectively through regional or national multi-state organizations), or the federal government (Congress or federal agencies).

Thinking about standards can be further delineated by focusing on the degree to which participation in any given standard is voluntary or mandatory. The capacity and inclination of standards-setting organizations to use mandates or incentives to drive adoption of these standards nationwide can vary widely. Taken together then, one can conceive of six different approaches to standards-setting governance (see Table 1):

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<sup>2</sup> Metzenbaum, in *Intergovernmental Management for the 21<sup>st</sup> Century*.

**Table 1. Governance Models for Standards-Setting**

		<b>PARTICIPATION</b>	
		<b>Voluntary</b>	<b>Mandatory</b>
<b>INITIATOR</b>	<b>Private Sector</b>	LEED (Leadership in Energy and Environmental Design)	ULC (Uniform Law Commission)  FASB (Financial Accounting Standards Board)
	<b>Interstate</b>	RGGI (Regional Greenhouse Gas Initiative)  IIC (Interstate Insurance Commission)	
	<b>Federal Government</b>	NPHPSP (National Public Health Performance Standards Program)  Energy Star  Medicaid	Clean Air Act

**Case Studies—National Standards Outside of K-12 Education**

This section explores several examples of different types of “common” standards created in policy sectors outside of K-12 education. What different organizational arrangements have been devised to craft and administer standards and assessments in these varied policy areas? How have these structures balanced the press of competing interests from diverse governmental and nongovernmental actors operating at the national, state, and local levels? What are the pros and cons of these different arrangements, how have they functioned in practice, and what is their transferability to public education?

## **Standards Created by Private Sector Organizations**

### *The Seal of Approval Model—Privately Set, Voluntarily Adopted*

The most decentralized and least coercive way to set standards is to remove government from the process altogether by allowing voluntary standards to be developed by private organizations.

One example is the Leadership in Energy and Environmental Design (LEED) Green Building Rating System. Developed by the U.S. Green Building Council (USGBC), it provides a suite of standards for the environmentally sustainable design, construction, and operation of buildings and neighborhoods. While this model has contributed to greater awareness and been successful in getting some companies to incorporate more environmentally friendly designs and materials into building construction, it has not been widely adopted or led to large-scale changes in building practices across the country.

### *The Professional Model—Privately Set, Publicly Mandated*

Another approach to common standards-setting is to rely on professionals—experts—in the private sector in a given domain to propose standards which may then be sent on for ratification by the political branches of a state or the federal government.

## Uniform Law Commission

In 1889, the American Bar Association, recognizing the mounting problems arising from increasingly complex and incompatible state legal codes, called for a national effort to bring about greater “uniformity of the laws.”<sup>3</sup> So in 1892, it created the National Conference of Uniform State Laws (NCCUSL), and by 1912, every state government had appointed uniform law commissioners. These commissioners meet periodically to study and review the laws of the

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<sup>3</sup> Information on the commission obtained from: <http://www.nccusl.org/>.

states to determine which areas of law should be uniform. They then draft “uniform acts” for consideration by their home state legislatures. Each state determines its own method of appointment and how many commissioners it will appoint, which gives the commission a “quasi-public” status. Since its creation, NCCUSL has drafted over 200 uniform laws, including the Uniform Probate Code, Uniform Partnership Act, Uniform Interstate Family Support Act, and, most significantly, the Uniform Commercial Code (UCC) of 1952. Written in partnership with the American Law Institute, the UCC has been adopted nationwide and facilitates commerce by providing a uniform set of rules governing commercial transactions.

A Scope and Sequence Committee sets the agenda for each of the periodic NCCUSL conferences by recommending specific areas of the law that would benefit from uniformity; if approved by the Executive Committee, a drafting committee is formed, which then submits a uniform act to the entire conference for debate at its annual meeting. All proposed acts must be debated by all commissioners at no less than two annual meetings. If approved by the conference, a final vote is then taken by the states present—one vote per state—and a majority (and not less than twenty) must approve it before it can be officially adopted as a uniform or model act and sent on to individual state legislatures for consideration.

An explicit purpose of the group is to regularly revise and update the laws under their purview. This means NCCUSL is constantly balancing diverse state interests with the need to provide uniform standards and adapt them to changing circumstances over time. Interestingly, the Conference produces both uniform *and* model acts; legislatures are urged to adopt uniform acts exactly as written, while model acts are intended to be adapted to the needs and circumstances of individual states. Since commissioners are unpaid for their services, the Conference only has a



small budget which is financed primarily through state appropriations based on population; additional funding comes from the American Bar Association and the American Law Institute. States remain free to decide for themselves on a case-by-case basis whether to adopt the model and uniform laws recommended by the Commission, but over time the efforts of the Commission have achieved much greater nationwide uniformity of state law. This model of standards-setting has been quite successful, but by design focuses on resolving technical issues within the law where consensus already exists, and avoiding politically controversial topics.

### Financial Accounting Standards Board

Another example of a quasi-public, national standards-setting organization is the Financial Accounting Standards Board (FASB). Since 1973, it has been the designated organization in the private sector for establishing standards of accounting that are the basis for the preparation of financial statements. While the U.S. Securities and Exchange Commission (SEC) has the statutory authority to establish financial accounting and reporting standards, its usual practice has been to recognize the FASB standards as authoritative. This reliance on a private professional association to set standards serves to functionally limit federal authority but does not involve the states directly in the standards-setting process. Professional associations serve similar standards-setting functions in many other domains; for example, the American Correctional Association establishes industry standards that are used to accredit correctional facilities and supervision programs across the country. As with the FASB and the SEC, these professional standards are often explicitly or implicitly adopted by government agencies at the state and national level. While professional standards are praised for their reliance on the expertise of practitioners, they are also criticized for a lack of external impartiality and accountability.

## **Standards Created by Multi-State Organizations**

Multi-state organizations such as the National Governors Association and the National Council of State Legislatures—as well as large numbers of single-issue organizations—routinely conduct research and develop recommendations for best practices on various public policy problems. Generally their recommendations are not adopted in a widespread or uniform manner by states, and as a result this approach usually fails to achieve anything approaching a national or common standard. In recent years, however, a number of promising examples of innovative intergovernmental efforts to create common standards have surfaced.

### *The Interstate Compact Model, Publically Set, Voluntarily Adopted*

One of the most interesting developments in intergovernmental relations—and one with potential salience for the CCSSI movement—is the growing use of interstate compacts as mechanisms for collective action on common challenges that cross geographical boundaries. While such compacts predate the U.S Constitution, states have looked to them to serve different political and policy purposes during different periods in American history. During periods of national government activism, interstate compacts have been seen as ways to safeguard state authority in the face of potential federal preemption, while eras of federal retrenchment have led states to use compacts to take action on national issues when Washington would not. For most of American history, compacts were seldom used and typically involved only a few states. Many of them dealt with border disputes and water rights. States approved only thirty-six compacts between 1783 and 1920. But more than 200 exist today and the average state belongs to twenty-five of them. Many contemporary compacts still involve handfuls of contiguous states and deal with transportation (e.g., the Port Authority of New York and New Jersey) or land and water rights

(e.g., the Snake River Compact of Idaho and Wyoming). These aren't too interesting as potential models for common standards in education. A small number of interstate compacts, however, involve the setting of common standards and the creation of governing institutions in other policy areas. Among today's 200-odd interstate compacts, twenty-two are nationwide in scope (several with thirty-five or more member states and independent administrative staffs) while thirty more are regional in scope (with eight or more member states).<sup>4</sup> Substantively, thirty-seven compacts deal with water allocation and conservation, fifteen cover energy and low-level radioactive waste disposal, eighteen deal with crime control, thirteen address education, and five focus on child welfare.<sup>5</sup> (A list of the compacts dealing with education and their members is included in Appendix A.) Ann Bowman has described this rise in interstate compacts as "horizontal federalism" and has observed that "it is only a short leap, then, to begin to think of interstate accords as potential alternatives to federal legislation."<sup>6</sup> Recent examples of interstate compacts that are national in scope include the Emergency Management Assistance Compact, National Crime Prevention and Privacy Compact, and the Wildlife Violator Compact.

Interstate compacts typically arise from the discussions of state officials and other stakeholders that make recommendations about the purpose and structure of the compact and draft an agreement for state legislatures to enact. Compacts do not become operational until a pre-established threshold of states have passed legislation permitting them to officially join (this number varies with the nature and geographic basis of the compact). Compacts serve as formal agreements between states and resemble both statutory law and contracts. That means they cannot be unilaterally repealed or amended by a state as is possible with uniform laws and

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<sup>4</sup> National Center for Interstate Compacts, Council of State Governments, <http://www.csg.org/programs/policyprograms/NCIC.aspx>.

<sup>5</sup> Pincus, p. 519.

<sup>6</sup> Bowman, "Horizontal Federalism: Exploring Interstate Interactions."

administrative agreements. As Bowman and Woods observe, “Once a state ratifies a compact, its provisions have legal superiority, taking precedence over conflicting state laws. The compact itself establishes the rules for state compliance with, and withdrawal from, the compact, and its amendment and termination.”<sup>7</sup> Crucially, compacts then compel a commitment by states that they cannot unilaterally abandon absent an explicit exit option contained in the compact agreement. The Council of State Governments notes, “That’s why compacts are considered the most effective means of ensuring interstate cooperation.”<sup>8</sup>

The fundamental question concerns the rights and responsibilities that each signatory takes on under the agreement and the extent to which these can be enforced. Much, of course, depends on the precise language of the particular compact agreement—not just the commitments made by the signatories but also the specific mechanisms for adjudicating disputes between signatories when they arise.<sup>9</sup> A violation of compact terms, like a breach of contract, is subject to judicial remedy and while the U.S. Supreme Court is the default forum for the resolution of disputes between states, compacts often include provisions for arbitration by a compact agency or third party.<sup>10</sup>

A crucial distinction must be made between advisory compacts and regulatory compacts. The former seek merely to facilitate the compilation and dissemination of research and best practices in a particular policy area. (The Education Commission of the States is a good example of this.) By contrast, regulatory (or administrative) compacts empower governing agencies to issue rules

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<sup>7</sup> Bowman and Woods, “Strength in Numbers: Why States Join Interstate Compacts.”

<sup>8</sup> Voit, *Interstate Compacts & Agencies 2003*.

<sup>9</sup> Morrow, “The Case for an Interstate Compact APA,” p. 4.

<sup>10</sup> Voit, *Interstate Compacts & Agencies 2003*.

and regulations that may be binding on states. Compact governing structures have taken four different administration forms to date:

- by existing state agencies and officials without the creation of new institutions (e.g., the Interstate Corrections Compact);
- by a specifically designated compact administrator inside each participating state but without an interstate governing institution (Interstate Compact on Mental Health);
- by a professional association (Interstate Compact on the Placement of Children); and
- by an interstate agency created specifically for that purpose (Compact for Adult Offender Supervision).<sup>11</sup>

The first significant independent interstate administrative agency created by a compact was the Port Authority of New York and New Jersey in 1921, but it was not until the 1970s that the majority of compacts created new administrative bodies of one type or another.<sup>12</sup> All interstate compacts must wrestle with two fundamental governance challenges: how much power the signatory states should cede to the compact administrative body, and what sort of relationship the compact will have with the federal government. Compacts struggle to spur collective action and/or harmonize the disparate policies of diverse states while also preserving maximum sovereignty and flexibility for individual members. While participation in compacts remains fundamentally voluntary—states choose to join them and can always withdraw—the purpose of the agreement is to create a public commitment and a high-enough exit cost to deter states from leaving once they have signed on. Of course, the more difficult compacts make it for states to

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<sup>11</sup> Mountjoy, “Understanding Interstate Compacts: Presentation to the National Association of Secretaries of State.”

<sup>12</sup> Florestano, “Past and Present Utilization of Interstate Compacts in the United States.”

leave—or the more regulatory authority that is placed in a compact governing body—the less likely states may be to sign on in the first place.

Interstate compacts must also address political, constitutional, and policy questions about the appropriate federal role in these ventures. Article I of the U.S. Constitution proclaims that “No state shall, without the consent of Congress...enter into any Agreement or Compact with another State.” Read literally, that clause would seem to require that all interstate compacts be subjected to congressional approval. However, as Matthew Pincus has noted, in practice many compacts have not been submitted to Congress and yet their validity has been respected by public officials and the courts. In a series of cases beginning with *Virginia v. Tennessee* (1893), and upheld most recently in *U.S. Steel v. Multistate Tax Commission* (1978), the U.S. Supreme Court has ruled that only a small subset of compacts—those that “enhance state power quoad the national government” and thereby threaten federal supremacy—need explicit congressional consent. Constitutional scholars believe that the growing number and scope of interstate compacts combined with the ambiguity in existing precedent makes it likely that the Supreme Court will take up the issue again in the near future.

Currently, however, William Morrow, Jr., has noted that interstate compacts permit a wide range of federal involvement. Some have no such involvement while others go so far as to seek certification as a federal agency (e.g., the Interstate Insurance Receivership Compact, Northeast Interstate Dairy Compact, and the Interstate Compact for Adult Offender Supervision). In other cases (e.g., the Pacific Northwest Electric Power and Conservation Planning Council and the Delaware River and Susquehanna River Basin Compacts), the federal government has itself

joined the interstate compact as a signatory, while specifying that the compact governing institution is not an agency of the federal government.<sup>13</sup>

### Interstate Insurance Compact

One interesting example of an interstate compact exists in the insurance arena. A large spike in insurance company insolvencies in the 1980s led to a wave of congressional investigations and new state regulations in the late 1980s and 1990s. In an effort to reduce their regulatory-compliance costs and forestall threatened federal legislation, members of the National Association of Insurance Commissioners (NAIC) adopted a resolution in 2000 calling for the modernization of state insurance regulation. State insurance regulators created a voluntary pilot program in 2001 called CARFRA (Coordinated Advertising, Rate and Form Review Authority) to develop national product standards and a single point of filing for life insurance and annuities. While CARFRA reportedly made progress in developing standards, industry observers believe it “was not successful because there was a general consensus that in order to overcome the state deviations in filing requirements, state laws and regulations would need to be changed. Because of these uncertainties, companies were not comfortable filing with CARFRA.”<sup>14</sup> So in 2002, NAIC joined with the National Conference of State Legislatures to develop interstate compact legislation. The Interstate Insurance Compact came into existence in 2004 when it was adopted by the legislatures of Colorado and Utah, but in accordance with its by-laws, it did not become operational until 2006 when it met one of two threshold goals: twenty-six member states or the ratification by states representing 40 percent of insurance premium volume.

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<sup>13</sup> Morrow, “The Case for an Interstate Compact APA,” p. 4.

<sup>14</sup> <http://www.insurancecompact.org/history.htm>

The Compact is governed by the Interstate Insurance Product Regulation Commission (IIPRC), which includes one member from each signatory state. A management committee of fourteen members supervises day-to-day operations of IIPRC (the six largest premium volume states plus eight others determined by premium volume and geographic region). Its mission is to develop uniform product standards and provide a central point of electronic filing for a variety of insurance products (including life insurance, annuities, disability income, and long-term care insurance). Today, thirty-six states take part in the Compact, and as of summer 2009, the commission had adopted fifty uniform standards for insurance products. Product standards are first drafted by NAIC's Interstate Compact National Standards Working Group and then sent to IIPRC's Product Standards Committee and, if approved, on to the IIPRC Management Committee which releases them for a sixty-day public comment period and public hearing. In order for a uniform standard to be adopted, it must receive the approval of two-thirds of the management committee and then two-thirds of the states that participate in the Compact.

The Compact received start-up funding from NAIC, but its regular operations are funded by registration and filing fees levied on participating insurers. It is promoted as increasing “the efficiency and effectiveness of the way insurance products are filed, reviewed, and approved to allow consumers to have faster access to competitive insurance products. It promotes uniformity through application of national product standards that include strong consumer protections.”<sup>15</sup> Significantly, however, even once a uniform standard has been adopted, states may opt out at any time for any reason by repealing the initial compact legislation. Under certain conditions, they may also opt out by state regulation.<sup>16</sup> Insurance companies are not required to

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<sup>15</sup> <http://www.insurancecompact.org/about.htm>

<sup>16</sup> Leduc, “Interstate Insurance Compact and the Insurance Industry’s Economic Impact to Connecticut.”  
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file their products with IIPRC and may chose to file directly with a state, in which case that particular state's standards and review process apply.

The ability of insurance companies to “standards shop” and the relative ease with which states can opt out puts pressure on the standards drafting committees not to push beyond what is acceptable to member states and powerful industry interests. And while IIPRC monitors member states for compliance with its standards and procedures and can refer violations to state insurance departments for potential action, IIPRC does not possess any power to force compliance on its own. As one observer noted, “both industry pressures and the threat of federal intervention have compelled the states to embark on a set of ambitious policy and institutional reforms.”<sup>17</sup>

Ultimately, however, “it is difficult to see how insurers’ desire for a common regulatory system can be reconciled with the states’ desire to retain their individual authorities to regulate insurers and insurance markets.”<sup>18</sup>

### The Regional Greenhouse Gas Initiative

The cross-border nature of environmental-problem spillovers, and the relative inactivity of the federal government in this area, has led to a growing “bioregionalism” movement in recent years. Barry Rabe has identified three different types of bottom-up climate policy: de facto regionalism, bicoastal regionalism, and cap-and-trade regionalism. An example of de facto regionalism can be seen with the creation of renewable portfolio standards (RPS) by clusters of neighboring states in the Southwest, Northeast, and Midwest, which mandate that electricity providers increase the amount of renewable energy they produce. While RPS were produced through intrastate processes, neighboring states have adopted comparable policies and established tradable

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<sup>17</sup> Klein, “An Overview of the Insurance Industry and Its Regulation,” p. 28.

<sup>18</sup> Klein, “An Overview of the Insurance Industry and Its Regulation,” p. 20.

renewable energy credits and some have begun to move toward uniform credit definition, oversight, and trading rules. One such effort—the Western Renewable Energy Generation Information System—was created by the Western Governors Association in 2007 and involves eleven states.<sup>19</sup> Alternately, an example of bicoastal regionalism was when sixteen states voluntarily adopted California’s more stringent vehicle emission limits (permitted through a waiver in the federal Clean Air Act).

None of these attempts at regional standards-setting, however, has attempted to create new institutions for multi-state collaboration. But one promising cap-and-trade example of regional standards-setting that has begun to move toward institutionalizing governance is the Regional Greenhouse Gas Initiative (RGGI). RGGI is the first multi-state commitment to a market-based effort in the United States to reduce greenhouse gas emissions.<sup>20</sup> Discussions initiated in 2003 by New York governor George Pataki led to a cooperative effort by ten Northeastern and Mid-Atlantic states<sup>21</sup> to create a regional cap-and-trade system that requires an overall 10 percent reduction in gas emissions by power plants by 2018. The RGGI Memorandum of Understanding (MOU), a blueprint of RGGI operations, was signed by seven states in December 2005 and three others have subsequently signed on. A 163-page “model rule” created a set of regulations to form the basis of individual state regulatory and statutory proposals. After adoption of the MOU and the model rule, each state must formalize its role in the RGGI through legislation, executive order, or administrative interpretation.

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<sup>19</sup> Rabe, in *Intergovernmental Management for the 21<sup>st</sup> Century*.

<sup>20</sup> Given its reliance on MOUs, RGGI is technically an interstate agreement rather than an official interstate compact.

<sup>21</sup> Connecticut, Delaware, Maine, New Hampshire, New Jersey, New York, and Vermont were the initial signatories, and they were joined by Maryland in 2006 and by Massachusetts and Rhode Island in 2007.

Negotiations over RGGI policies are conducted by a multi-state staff working group (and its focused subcommittees), which is composed of policy professionals from the states' environmental and energy departments, who report to their agency heads and seek guidance from their governors when necessary. Observers note that the working group struggles to navigate among diverse stakeholders and must constantly temper its policy recommendations with political considerations in order to keep states on board.<sup>22</sup> Since member states are free to withdraw from RGGI with only thirty days' notice and with no formal sanction or financial penalty, the secession threat has a major impact on the organization's negotiations and rulemaking. The absence of a federal mandate and the wide latitude contained in the MOU have, however, enabled the RGGI staff to creatively deploy a mix of early reduction credits, triggers, safety valves, and offsets to placate various constituents who become disgruntled with the existing standards at a particular point in time. This political bargaining is the source of much controversy among some participants, but others indicate that it is essential for the collective effort to survive.

During the first four years of RGGI's operation, it had no independent staff or institutional home, relying instead on the staff working group, a website, and rotating meetings. In July 2007, however, a regional organization (RO), RGGI, Inc., was finally created in New York City, as called for in the original MOU, complete with a five-person staff and million-dollar operating budget. (The RO budget is funded from payments by signatory states in proportion to their CO<sub>2</sub> emissions, i.e., the bigger, more polluting states pay a greater share. All states have completed their individual rulemaking processes and created a CO<sub>2</sub> budget trading program in accordance with the MOU guidelines.) The MOU specified that this organization would be nonprofit and run

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<sup>22</sup> Rabe, in *Intergovernmental Management for the 21<sup>st</sup> Century*, p. 186.  
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by an executive board with two representatives from each member state. The founding document further directed that it function as “the forum for collective deliberation and action among signatory states in implementing the program” with responsibility for managing emissions trading, allowance tracking, and offsets development and implementation.<sup>23</sup> The MOU thus articulated a potentially important regional advisory institution for multi-state climate control, albeit within tightly circumscribed boundaries. The MOU carefully notes that: “The RO is a technical assistance organization only. The RO shall have no regulatory or enforcement authority with respect to the Program, and such authority is reserved to each Signatory State for the implementation of its rule.”

The RGGI interstate compact has not been submitted to Congress for approval, and the perception that the Bush administration was hostile to climate control efforts—combined with fear of federal preemption—has led RGGI to keep its distance from Washington. Some observers have suggested that the RO might eventually be given greater regulatory authority over member states, but Michael Smith has noted that this might trigger the need for congressional approval of the compact.<sup>24</sup> The RGGI is still very much a work in progress: The first compliance period for each state’s linked carbon dioxide Budget Trading Program began January 1, 2009. While it is far too early to assess its ultimate impact on emissions, it represents a promising non-federal interstate policy initiative. It is also a model that may spread, as a number of western states have joined California to begin work on another regional cap-and-trade system.

### **Federally Initiated Standard-Setting**

*The Partnership Model—Publically Set (Federal-State Collaboration), Voluntarily Adopted*

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<sup>23</sup> RGGI Memorandum of Understanding

<sup>24</sup> Smith, “Murky Precedent Meets Hazy Air: The Compact Clause and the Regional Greenhouse Gas Initiative.”  
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Another interesting intergovernmental model of standard-setting is the National Public Health Performance Standards Program (NPHPSP), which was initiated in 1998 under the leadership of the Federal Centers for Disease Control and Prevention (HHS) in partnership with a number of state and private sector organizations.<sup>25</sup> The collaboration sets national standards for the optimal level of performance for state and local public health systems as well as three assessments: a state public health system performance assessment, a local public health system performance assessment, and a local public health governance performance assessment. The first assessment instrument was released in 2002 and was used by more than thirty states.<sup>26</sup> Note, however, that the NPHPSP standards and assessments target “systems” of public health—all of the public, private, and voluntary entities involved in public health activities in a given area. As such, they are not intended to provide minimum expectations, or to assess the effectiveness of individual program, organization, or agency performance, but rather only as “a planning tool for quality improvement.”<sup>27</sup> In addition, the performance instruments rely on voluntary self-assessments (conducted on a recommended three- to five-year cycle) by state and local public health officials, so there may be questions about the reliability of the data that are collected.<sup>28</sup>

Significantly, the recently created Public Health Accreditation Board has initiated work on a national voluntary accreditation program for state and local public health departments and it relied heavily on the NPHPSP standards and assessments as it has developed its own standards and measures for accreditation. The NPHPSP is interesting as a model that incorporates federal

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<sup>25</sup> These organizations include the American Public Health Association, Association of State and Territorial Health Officials, National Association of County and City Health Officials, National Association of Local Boards of Health, National Network of Public Health Institutes, and the Public Health Foundation. More information on the partnership can be found at <http://www.cdc.gov/od/ocphp/nphpsp/index.htm>.

<sup>26</sup> “National Public Health Performance Standards Program Overview Presentation,” January 2008. Accessed at: <http://www.cdc.gov/od/ocphp/nphpsp/PresentationLinks.htm>.

<sup>27</sup> <http://www.cdc.gov/od/ocphp/nphpsp/FAQ.htm>

<sup>28</sup> Beaulieu and Scutchfield, “Assessment of Validity of the National Public Health Performance Standards.”

leadership with a wide variety of actors from the public and private sectors and federal and state authorities into standard-setting and links these “gold standards” to assessments as a means of increasing transparency and accountability in public health provision.

*The Stamp of Approval Model—Federally Set, Voluntarily Adopted*

The “Energy Star” rating system is a voluntary labeling program created in 1992 by the U.S. Department of Energy and the Environmental Protection Agency (EPA) to identify and promote energy-efficient products. The Energy-Star label now can be found on sixty different product categories including major appliances, office equipment, lighting, home electronics, and even residential, commercial, and industrial buildings.<sup>29</sup> While federal agencies establish the standards of energy efficiency products must meet, companies make their own determinations as to whether their products comply with the standards. There has been little federal effort to verify these claims. The program has been praised for promoting greater awareness about energy efficiency among manufacturers and consumers and delivering substantial energy savings—which the DOE estimates at \$18 billion in 2008 alone. But the program has also been criticized for not setting ambitious enough energy efficiency standards for companies that want to use the label and for failing to ensure that products which carry the label are as efficient as advertised.

A 2009 report by the EPA inspector general found that, for example, some products carrying the Energy Star label were less energy-efficient than non-Energy Star products and called for more product testing. In March 2010, the Obama administration announced plans to begin testing all Energy Star products rather than relying on manufacturers’ claims for the most part as the DOE

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<sup>29</sup> <http://www.energystar.gov/>

has in the past.<sup>30</sup> The EPA also announced plans for more ambitious and regularly updated standards; they increased the efficiency standard necessary to earn the Energy Star label (top 25 percent of product category) and created a new label of “Super Star” for the highest-efficiency products (those in the top 5 percent). As a result, a federal program that began as voluntary appears to be becoming more regulatory over time in response to concerns about lack of oversight and standardization. The Energy Star experience demonstrates that voluntary federal standards may deliver limited gains in transparency and efficiency but are ultimately constrained in their ability to deliver more reliable, systemic change in behavior in a given sector absent more meaningful oversight or accountability.

*The Grant-in-Aid Model—Federally Set, Federally Incited (Power of the Purse)*

Another way in which the federal government attempts to set standards, particularly when it does not have direct constitutional authority in a given policy area, is by conditioning federal aid on state acceptance of national standards. In this way, federal policies such as TANF (Temporary Assistance to Needy Families) and Medicaid have used grant-in-aid conditions to advance national goals—and create minimum national standards for social services—even while conferring considerable discretion on state and local officials in the design and implementation of programs using these federal funds. Unlike formula grants, which are distributed to all states on the basis of pre-determined statutory guidelines, conditional or incentive grants are only disbursed to those that meet particular federal standards.

In *South Dakota v. Dole* (1987), the U.S. Supreme Court upheld the constitutionality of conditional funding in the service of national standards or goals. Examples include the 1994 and 1995 federal crime bills that rewarded states that adopted federal truth-in-sentencing standards

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<sup>30</sup> *USA Today*, “U.S. Plans to Test All Energy Star Products,” March 20, 2010.

(which required prisoners to serve at least 85 percent of their sentences). Other examples include the use of Elementary and Secondary Education Act (ESEA) funds to push states to enforce judicial standards of school integration, and the use of federal highway construction funds to create a national speed limit and drinking age. The latest version of ESEA, No Child Left Behind, made federal funding contingent on state adoption of academic standards and annual standardized tests in grades 3-8 (though states of course remained free to determine their own individual standards and tests).

#### *The Regulatory Model—Federally Set, Federally Mandated*

In policy areas where the federal government claims a constitutional mandate (either explicitly or thorough judicial interpretation), it is the norm for Congress or federal agencies simply to establish national standards on their own and mandate these to states. This has been the case in numerous policy areas, but a good example is water and air quality standards, where the Clean Air Act established National Ambient Air Quality Standards and National Emission Standards for Hazardous Air Pollutants, and the Clean Water Act created national water quality standards, all of which are enforced by the EPA. This model of standard-setting, of course, is highly centralized and regulatory and as such may result in a high level of compliance and uniform standards adoption. However, it provides little role or flexibility for states and as a result seems ill suited (as well as politically off-limits) for K-12 education.

#### **Discussion—Implications and Questions for Further Thought**

The movement toward national standards and assessments in education is at an important juncture. Considerable support exists for developing common performance targets and metrics to provide greater transparency about educational outcomes and to drive school improvement



efforts. As the above analysis has demonstrated, however, how multi-state efforts such as CCSSI can be institutionalized and governed is crucial to their ultimate sustainability and impact. In this respect, the intergovernmental challenge in education is similar to that in other policy areas: How do we simultaneously limit federal control and respect state rights, while nonetheless developing collective institutions that can advance national goals? Many multi-state organizations in other spheres have found it difficult to create structures that can facilitate joint action in pursuit of common goals while vouchsafing to individual member states the maximum in policy sovereignty and programmatic flexibility. The specter of federal intervention, meanwhile, always hovers over state efforts.

Many of the interstate standards-setting efforts to date have been led by—and have created institutions controlled by—professional or corporate interests whose primary concern is to reduce the cost and complexity of complying with inconsistent state regulations. The Professional Model has been criticized by observers who question the ability of industries to produce and enforce rigorous standards and assessments that would raise quality and/or protect the interests of customers because it would entail such large costs for their companies. Efforts to create governance structures for the Common Core State Standards must be cognizant of this “foxes watching the henhouse” problem, as the very public officials and professionals that will be impacted the most by education standards are likely to be the ones most involved in the creation of those very standards.

The governance of CCSSI initiative is thus likely to be constantly buffeted by the political self-interest of governors and school chiefs and the professional self-interest of educators and school administrators just as commercial self-interest has influenced the evolution of standards in other

sectors. In this regard, recent concerns about the purported failure of voluntary systems of transparency and accountability in higher education should give pause as an instructive example. Kelly and Aldeman found that while university leaders have taken some initial steps to provide greater access to information about their institutions in response to federal pressure, these efforts have lacked coordination, verification, and clarity and as a result have failed to produce “meaningful, transparent mechanisms with which to compare institutional performance.”<sup>31</sup>

At the same time, primary-secondary education is a unique policy area and the effort to create and sustain common standards here will likely differ from standard-setting efforts in other domains. Education standards, for example, focus on the public rather than the private sector, and public institutions (schools and the government institutions that control them) can be expected to respond to standards in different ways than private corporations. A political backlash against overly rigorous standards or embarrassing results on common assessments must be anticipated, and the future Common Core governing body must be given sufficient institutional, procedural, and political insulation to protect its independence and integrity.

This raises an important question that has received insufficient attention both in recent policy debates about school reform and in the scholarly literature about federalism more generally. Given the significant substantive, political, and institutional differences across different policy sectors (e.g., health care vs. transportation), what sorts of governance arrangements are likely to be more or less effective with particular *kinds* of policy sectors or certain types of policy goals? How, in turn, does this connect back to the assessment and financing pieces? Thus, even as we look outside the K-12 sector for possible models, we need to remain mindful of the ways

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<sup>31</sup> Kelly and Aldeman, “Foxes Watching the Henhouse: How Higher Education’s Voluntary Accountability Systems Miss the Mark.”

in which education differs from other policy sectors and the implications of this for the crafting of national standards and assessments.

This all returns us to the central questions of governance: What kind of institutional structure might best serve the Common Core initiative over the long haul? What kinds of powers, resources, and independence does it have? The Interstate Compact Model is a promising paradigm for common academic standards and assessments because it offers a way to formalize state collective action with or without the participation of the federal government. The Regional Greenhouse Gas Initiative, for example, has been called “federalism without the federal government”<sup>32</sup> since the regional organization it created is given the power to track emissions and allowances from states in an effort to provide transparent data to document progress in meeting climate control standards. Interstate compacts may offer a middle ground of coordination between state autonomy and federalization and as such may represent an attractive option in areas like education where there is a strong tradition of local control but growing pressure for common standards.

While some may be skeptical of the extent to which states might voluntarily cede meaningful authority to an interstate compact and its attendant governing body, Bowman and Woods’ analysis was more optimistic. They found that states tend to enter into compacts less out of fear of federal preemption than out a desire to collectively act on issues where the federal government has failed to do so. “In fact,” they note, “many states voluntarily enter into compacts that have the effect of eroding their autonomy by granting the compact supersessive legal authority...[they] appear willing to sacrifice this...autonomy in an effort to mitigate social

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<sup>32</sup> Rabe, *The Complexities of Carbon Cap-and-Trade Policies: Early Lessons from the States*.  
Thomas B. Fordham Institute

problems.”<sup>33</sup> Compacts have witnessed a resurgence in recent years as states have increasingly indentified them as an effective means of organizing for collective action in the absence of federal leadership—or to preempt it. Forty-nine different compact bills were enacted in 2005, the most since 1969.<sup>34</sup>

Keep in mind that thirteen compacts already exist in education, including the Interstate Compact for Education which created the Education Commission of the States (ECS) and which forty-seven states have joined, the Interstate Agreement in Qualifications of Educational Personnel (thirty-five states), and the Southern Regional Education Compact (sixteen states), which created the Southern Regional Education Board (SREB). The ECS and SREB, however, are advisory rather than regulatory compacts and, in order to push standards and assessments, the Common Core effort will likely need a new organization—or a grant of new powers to an old organization—that can secure a commitment to collective action on behalf of states. Though the model of common standards is often perceived to be one of coercion, the RGGI experience emphasizes the importance of bargaining and peer pressure as well. As Paul Manna observes in his paper for this project, it also highlights the need to build on established networks of policy professionals in the states—trusted, experienced administrators who have established relationships with one another and are seen as honest brokers rather than advancing a political agenda.

While the Interstate Compact Model holds promise as a mechanism to institutionalize the governance of the CCSSI effort, it carries with it some unresolved political and constitutional questions regarding Washington’s role. Interstate compacts face something of a double-bind in

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<sup>33</sup> Bowman and Woods, “Strength in Numbers: Why States Join Interstate Compacts.”

<sup>34</sup> Mountjoy, “Understanding Interstate Compacts: Presentation to the National Association of Secretaries of State.”

terms of governance: If they do not create a sufficiently powerful governing body, they will likely fail to reach collective goals, but if the collective body becomes too powerful it risks alienating current or prospective members. It is here that the federal government can perhaps play its most important role—not through direct involvement in the organization’s governance, but by lowering the political and financial costs to states to join CCSSI and by raising the political and financial costs to states that refuse to do so.

This overview of intergovernmental standards-setting in the contemporary era has highlighted a number of promising partnerships among states and between states and the federal government but also found the governing infrastructure supporting these efforts to be incompletely developed. Most interstate collaborations to date only go so far as to highlight best practices, to identify the successes of particular programs in individual states, and to make recommendations for other states to consider. Attempts to assess state progress toward meeting standards are exceedingly rare and it is almost unheard of for interstate organizations to attempt to hold members to account for their failure to demonstrate progress on assessments in meeting standards. (The NGA, for example, appears to have few efforts to advance national standards—and even fewer to advance assessment—outside of K-12 education.) The CCSSI enterprise has generated momentum behind an ambitious national agenda in education, but it remains to be seen whether states have the political will or the institutional capacity to act collectively in multi-state organizations to advance shared policy goals to this degree. In this sense, the outcome of the K-12 Common Core effort is an enormously important experiment not just for education but also for American intergovernmental relations more generally. The odds of the experiment succeeding will be greatly enhanced by close attention to questions of governance and institutional design.



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## Appendix A

### **EDUCATION COMPACTS AND AGENCIES (As of 2003)** (Drawn from William Voit, *Interstate Compacts & Agencies 2003*, Council of State Governments, 2003)

#### **(Interstate) Agreement (Compact) on Qualification(s) of Educational Personnel**

This interstate agreement facilitates movement among the states of teachers and other professional educational personnel, and establishes procedures for the employment without reference to their state of origin. Eligibility is nationwide in scope.

##### *Member states:*

Alabama, Alaska, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, District of Columbia

#### **(Interstate) Compact for Education (Compact)**

Establishes a commission (Education Commission of the States) to serve as an information center on educational matters and to provide a forum for the development of educational policy. Compact eligibility is nationwide in scope.

##### *Member states:*

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, District of Columbia

##### *Interstate Agency:*

Education Commission of the States  
700 Broadway, Suite 1200  
Denver, CO 80203-3460  
Tel: (303) 299-3600  
Fax: (303) 296-8332  
[www.ecs.org](http://www.ecs.org)  
[ecs@ecs.org](mailto:ecs@ecs.org)

##### *Additional Data:*

Date of organization: 1966

Number of Members: Seven from each of the member jurisdictions; and includes states, the District of Columbia, American Samoa, Puerto Rico, U.S. Virgin Islands

Method of Selection: Governor of each member jurisdiction serves as chairman of the state's commission. The ECS chairmanship alternates each between a Democratic and Republican governor. Each legislative chamber of each member state selects one legislator, and four additional commissioners are appointed by the governor, unless the laws of the state otherwise provide.

### **Compact for Pension Portability for Educators**

Establishes procedures to enable professional employees of public schools, colleges, and universities to transfer money and pensionable service between states. The purpose of the compact is to enable professional employees of public schools, colleges, and universities to move to states with shortages of such professionals, without these employees losing earned pension benefits. Any U.S. state, territory or possession, and the District of Columbia are eligible to join the compact. The compact becomes effective when two or more states enact statutes adopting it. It does not reference congressional consent.

*Member states:*

Rhode Island

### **Interstate Library Compact**

Authorizes state, local, and private libraries to enter into agreements for provision of services and utilization of facilities on an interstate basis, including the creation of joint library districts. Compact eligibility is nationwide in scope.

*Member states:*

Alabama, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Montana, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, Wyoming\*

\*The compact is dormant in Wyoming.

### **Maine-New Hampshire School District Compact**

Authorizes interstate school districts in Maine and New Hampshire, and permits consolidation of elementary and secondary schools, when appropriate. Congressional consent is required.

*Member states:*

Maine, New Hampshire

### **Midwestern (Regional) Higher Education Compact**

Established in 1991 as an interstate compact agency, the Midwestern Higher Education Commission (MHEC) is charged with promoting interstate cooperation and resource sharing in higher education.

*Member states:*

Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Wisconsin

*Interstate Agency:*

Midwestern Higher Education Commission  
1300 South 2nd St., Suite 130  
Minneapolis, MN 55454-1079  
Tel: (612) 626-8288  
Fax: (612) 626-8290  
www.mhec.org  
bobk@umn.edu

*Additional Data:*

Date of organization: 1991

Number of members: 8 states, 40 commissioners

Method of selection: Five members from each state as follows: the governor or designee; two legislators, one from each House (except Nebraska which may appoint two from its unicameral legislature) and two at-large members from the field of higher education.

**New England Higher Education Compact**

Establishes a board to foster development and joint use of higher education resources among the six New England states.

*Member states:*

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

*Interstate Agency:*

New England Board of Higher Education  
45 Temple Place  
Boston, MA 02111  
Tel: (617) 357-9620  
Fax: (617) 338-1577  
www.nebhe.org  
pubinfo@nebhe.org

*Additional Data:*

Date of organization: 1955

Number of members: 48

Method of selection: Eight members from Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, appointed variously by the governor, speaker of the House, or president of the Senate.

**New Hampshire-Vermont Interstate School Compact**

Establishes a planning committee for the purpose of increasing educational opportunities in Vermont and New Hampshire by encouraging the formation of interstate school districts.

*Member states:*

New Hampshire, Vermont

**New Hampshire-Vermont Interstate School Compact (Dresden or Hanover-Norwich School District)**

Establishes an interstate school district between Hanover, New Hampshire, and Norwich, Vermont.

*Member states:*

New Hampshire, Vermont

*Interstate Agency:*

Dresden School District  
SAU70, 45 Lyme Rd., Room 207  
Hanover, NH 03755  
Tel: (603) 643-6050  
Fax: (603) 643-3073  
www.valley.net/~SAU70/  
SAU.70@valley.net

*Additional Data:*

Date of organization: 1969

Number of members: The Board will consist of an odd number of members from five to fifteen. There are 11 current members.

Method of selection: Each member district is entitled to elect at least one member of the Interstate School Board.

**New York-Vermont Interstate School Compact**

*Member states:*

Vermont

**Southern Regional Education Compact (Board)**

Establishes a board to foster development and joint use of higher education facilities throughout the region, to generally advance elementary, secondary, and higher education and improve the social and economic life of the South. No consent of Congress is required.

*Member states:*

Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri\*, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia

\* This compact is listed in Missouri's statutes but the SREB does not list Missouri as a member state.

*Interstate Agency:*

Southern Regional Education Board  
592 Tenth Street, NW  
Atlanta, GA 30318-5790  
Tel: (404) 875-9211  
Fax: (404) 872-1477  
www.sreb.org  
info@sreb.org

*Additional Data:*

Date of organization: 1948

Number of members: 80

Method of selection: The governor of each state and four people appointed by each governor, one being a legislator and at least one from the field of education. Officers are elected on an annual basis.

**The NASDTEC Interstate Contract (2000 - 2005)**

The NASDTEC Interstate Contract facilitates the movement of educators among the states and other jurisdictions that are members of NADTEC and have signed the Contract. Although there may be conditions applicable to individual jurisdictions, the Contract makes it possible for an educator who completed an approved program and/or who holds a certificate or license in one jurisdiction to earn a certificate or license in another state or jurisdiction. For example, a teacher who completed an approved teacher preparation program in Alabama generally will be able to earn a certificate in Georgia. Receiving states may impose certain special requirements which must be met in a reasonable period of time. If you completed an approved teacher education program and/or hold a valid teacher's certificate or license in one state and seek certification under the terms of the NASDTEC Interstate Contract, contact the teacher certification/licensure office in the intended receiving state or jurisdiction. As of January 2002, the following jurisdictions have signed the NASDTEC Interstate Contract for 2000-2005:

Teacher - 48 jurisdictions

Support - 29 jurisdictions

Administrator - 31 jurisdictions

Vocational - 19 jurisdictions

*Interstate Agency:*

National Association of State Directors of Teacher Education and Certification (NASDTEC)  
Roy Einreinhofer, Executive Director  
39 Nathan Ellis Highway, PMB #134  
Mashpee, MA 02649-3267  
Tel: (508) 539-8844  
Fax: (508) 539-8868  
www.nasdtec.org  
nasdtec@attbi.com

### **Western Regional (Higher) Education Compact**

Creates a regional commission to help western states increase educational opportunities for their citizens, improve colleges and universities, expand the supply of specialized manpower, and inform the public as to needs of higher education.

#### *Member states:*

Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, North Dakota, New Mexico, Oregon, South Dakota\*, Utah, Washington, Wyoming.\* The Western Interstate Commission for Higher Education (WICHE) lists South Dakota as a member of the Western Regional Education Compact, but CSG was unable to confirm whether South Dakota joined the compact by enacting a law.

#### *Interstate Agency:*

Western Interstate Commission for Higher Education  
P.O. Box 9752  
Boulder, CO 80301-9752  
Tel: (303) 541-0200  
Fax: (303) 541-0291  
<http://www.wiche.edu>  
[jmock@wiche.edu](mailto:jmock@wiche.edu)

#### *Additional Data:*

Date of organization: 1953

Number of members: 13 states, plus 2 affiliated states

Method of selection: Three commissioners appointed by the governor of each member state.

\*Note: Since the above list was compiled in 2003, the following educational compact has been enacted.

### **Interstate Compact on Educational Opportunity for Military Children**

Allows school boards and state departments of education to work cooperatively across state lines to assist transitioning military families.

#### *Member states:*

31 states