



4-1-2015

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Recommended Citation

Stedrak, Luke J. and Rose, Amanda L. (2015) "Perspectives on Online Education: A Snapshot of State Regulatory Framework Development in Elementary and Secondary Online Education," *Educational Considerations*: Vol. 42: No. 2. <https://doi.org/10.4148/0146-9282.1053>

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A Snapshot of State Regulatory Framework Development in Elementary and Secondary Online Education

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Introduction

With the advent and growth of elementary and secondary online education in the United States,¹ teaching and learning has undergone radical change with heretofore unimagined alternatives to traditional brick-and-mortar classrooms. Online education is here to stay. According to a 2013 survey by Blackboard:²

- 43% of administrators state that their school districts offer a variety of online courses to meet diverse student needs.
- 60% of "flipped learning"³ teachers believe online learning motivates students more.
- 89% of parents want their child in a class where mobile devices are used.⁴

Although pinning down the growth of K-12 online education is challenging because of the use of multiple measures and the limitations of comparability of data across states, Christenson, Horn, and Johnson concluded from their review of the literature that the expansion of online learning is an integral part of elementary and secondary education growth.⁵ In a look to the future, KnowledgeWorks⁶ forecasts "the proliferation of neuro-enhancement tools and networks"⁷ and asserts "learning will be customized, connected, amplified, authentic, relevant, and resilient."⁸

Law and policy in some states has lagged behind the emergence of online K-12 education. To that end, the purpose of this article is to provide a snapshot of current state regulatory frameworks related to elementary and secondary online education. The article is divided into the following sections: background information about K-12 online education; state statutory review of K-12 online education policy; curriculum matters; academic integrity in an online education environment; and teaching in K-12 online education. The final section presents conclusions and recommendations for future research.

Background

As a reference point, distance education is much older than the Internet-based online education seen today.⁹

Correspondence, television, and other outreach methods for formal learning have been a part of the K-12 educational landscape for decades. The creation of the World Wide Web, commonly referred to as the "Web," has the potential to dramatically broaden students access to classes, often in a cost-effective manner.¹⁰ Internet-based online education also differs from earlier learning technologies because students have the ability to network and communicate virtually.

The International Association for K-12 Online Learning (iNACOL) estimates that 1.5 million students have taken at least one elementary and secondary online course,¹¹ while Ambient Insights, an online learning consulting firm, estimates that over four million students have had at least one virtual learning experience.¹² These figures illustrate one of the challenges in quantifying participation in K-12 online education in a meaningful and consistent manner in that there is no consensus on how best to measure participation. A related example is projection of online course enrollments. For example, iNACOL estimates a growth rate of 30% a year to 15 million students, over a quarter of the K-12 student population, by the year 2020.¹³

The growth of K-12 online education has not been without controversy. First, despite a significant amount of research,¹⁴ research on the effectiveness of K-12 online education is sparse.¹⁵ Second, although online education has been hailed as "leveling the playing field" for students, Lin maintained it was "failing to live up to its promise of providing greater opportunity for all."¹⁶ In a Washington state study, he found fewer minority, lower income, special education, and bilingual students attended online schools. Further, some state performance audits of K-12 online education have raised concerns not only about academic outcomes, but also fiscal management. In 2006, state auditors in Colorado found that students in online schools, all of which received state taxpayer funding, performed poorly on state exams and had high repeater,¹⁷ attrition, and drop out rates.¹⁸ One online public school even diverted state funding to private religious instruction, a violation of the Colorado constitution.^{19,20} In both the Colorado state auditor's report and a successful court case brought by the Wisconsin Education Association,²¹ failure of online schools to employ licensed teachers in violation of state law was brought to the fore. Third, concerns about for-profit providers of public K-12 online education have arisen. In Arizona, publicity related to K12 Inc.'s²² outsourcing of essay grading and math tutoring to India for students attending its state-funded online school, the Arizona Virtual Academy, resulted in an abrupt halt to these practices.²³ Of note is that K12 Inc. is among six private companies (Educational Options Inc., Apex Learning, PLATO, A+LS, and Connections Academy) that are considered to be the largest third party online course providers in the United States.²⁴

State Statutory Review

Language from previous generations of technology remains in some states' statutes. For example, statutes in Louisiana²⁵ and North Dakota²⁶ still refer to "distance education courses," and terminology like "remote education programs" is still found in Illinois statutes.²⁷ In contrast, Arkansas statutes use

contemporary terminology like "Internet, long-distance, and virtual."²⁸ States with a centralized virtual school use a variety of names, some contemporary, some not.²⁹ For example, Idaho uses "Digital Learning Academy" to describe a centrally funded Idaho state virtual school while "Wyoming Switchboard Network" is the state's online learning platform.

Forty-eight states provide funding specific to K-12 online education, affirming its central role in public K-12 education.³⁰ States use three models for provision and funding: centralized, publicly funded, and a combination of public/private funding. Thirteen states use a centralized model. Nine states use a publicly funded model, but, of these, seven also allow private/for-profit alternatives. In contrast, the public/private funding model allows school districts to choose between a publicly or privately funded virtual school model. Twenty-six states use this model. Some states monitor the participation of for-profit providers of K-12 online education more closely than others. For example, Arizona has a probationary approval mechanism in order to become an accredited provider of online education in the state.³¹

How states oversee and regulate K-12 online education differs. For example, Colorado³² and Idaho³³ have detailed statutory frameworks, specifying everything from contact hours to teacher requirements and grading policies. Oklahoma provides a third example. Here the state specifies in detail required technical infrastructure of a school; that is, to be a pilot school in the Virtual Internet School in the Oklahoma Network (VISION) program, the school must contain a "video T1 digital circuit, connection to an OneNet DS3 Hub Site, 128 bit encryption servers, and 100mb Internet service to desktops"³⁴ In contrast, states like Alabama³⁵ and Alaska³⁶ delegate oversight and regulation to their respective state board or department of education. Further, Massachusetts leaves such matters up to individual school districts, stating: "Since the Department [of Education] does not approve or oversee online courses, it is up to each school district to decide if it will allow students to take online courses, determine which students can take online courses, and evaluate the available online courses offerings."³⁷

Curriculum Matters

Some states take an active interest in curriculum matters related to K-12 online education. For example, Louisiana requires course content to be based upon current learning theory and curriculum standards.³⁸ Also, course content must be clearly written and revised based upon feedback, and include appropriate media for differentiated instruction. Minnesota focuses on course syllabi, but delegates final approval to local school districts.³⁹ When a student enrolls in a K-12 online course, the provider is required to make the syllabus available to the student's home school district for review. The district has the authority to decide if the syllabus meets the requirement for credit before authorizing the enrollment.

Several states require that individualized learning plans be part of K-12 online education. For example, in Illinois, each student "must have a written remote educational plan that has been approved by the school district."⁴⁰ The learning

plan details how achievement goals are aligned to standards, progress is reported, teachers and students interact, and compliance is achieved. This educational plan even details participation in extracurricular activities,⁴¹ responsibilities of the student's family, and district allocation guidelines. Other states that require individualized learning plans for K-12 online education include Alabama,⁴² Alaska,⁴³ California,⁴⁴ and Wyoming.⁴⁵

A few states have moved toward integrating online coursework into K-12 education by making it a graduation requirement. In 2006, Michigan became the first state to require students to complete online coursework as a graduation requirement.⁴⁶ All students are required to take a fully online course or complete a specific number of hours utilizing online learning in a traditional course.⁴⁷ Currently, Alabama requires students to "complete one online/technology enhanced course or experience prior to graduation."⁴⁸ In addition, Florida mandates that each student must complete at least one course via virtual school prior to graduation.⁴⁹

Academic Integrity in an Online Education Environment

Academic integrity is as important in an online education environment as it is in a traditional classroom setting. Missouri requires students to be made aware of academic integrity issues, such as plagiarism, before enrollment in an online course.⁵⁰ In Missouri, the authority for disciplinary action lies with the school district in which the student is enrolled, although virtual schools have disciplinary authority as well. Issues of due process inevitably follow academic integrity issues. To ensure the rights of online students, states like Alaska require that "the student and parent have the same right to access the district appeal process as students and parents in the district's other programs."⁵¹ Some states also require that student exams in online courses be proctored. For example, Maine requires that exams and state assessments be conducted in "an environment directly monitored by a teacher or administrative staff."⁵² Arizona,⁵³ Idaho,⁵⁴ Mississippi,⁵⁵ and South Carolina⁵⁶ have similar requirements. In Illinois, online students enroll in an "attendance" center where attendance is recorded and tests are administered.⁵⁷

Teaching in K-12 Online Education

In general, all states require public school teachers to be licensed or certified, but each state has its one unique set of requirements. In addition, a number of states offer a range of "alternative" routes to teacher licensure. There is no single, comprehensive source at present that details and compares all of these, much less whether or not exceptions are made for those teaching K-12 online courses, or, conversely, whether or not there are additional requirements. This section takes a more general approach by examining a selection of state laws and policies that addresses current teaching issues related of K-12 online courses.

Taking a proactive approach, Idaho has created a set of ten standards for online teachers, including articulated knowledge, dispositions, and performances on state standards.⁵⁸ In order to avoid loopholes, West Virginia law makes explicit that online teachers must also be trained

in "classroom management" and "monitoring of student teaching," just as traditional classroom teachers are.⁵⁹ In contrast, Texas has developed an alternative teacher certification pathway specifically for those who seek to teach K-12 online courses.⁶⁰ Given a concern for teaching and learning conditions, Minnesota law requires that "...unless the commissioner grants a waiver, a teacher providing online instruction must not instruct more than 40 students in any online learning courses or program."⁶¹

The online learning environment involves more than just certified teachers. For example, Kentucky requires state teacher training institutions to build programs to train "online coaches" for students in the online elementary and secondary education systems.⁶² Colorado law recognizes "mentors," individuals who provide learning center supervision for online coursework, as paraprofessionals who do not need to be certified teachers as long as they meet paraprofessional requirements.⁶³

Conclusions and Recommendations for Future Research

The purpose of this article was to provide the reader with a snapshot of current state regulatory frameworks related to elementary and secondary online education. In addition to background information about K-12 online education, the article offered an analysis of selected state statutes, curriculum matters, academic integrity, and teaching related to elementary and secondary online education. In a 50-state environment, statutes and policies are as varied as the states themselves. Perhaps the only common thread is teacher certification, but even there, each state has its own set of requirements; and it is unclear if the advent and growth of K-12 online education has resulted in significant changes in a licensure regime largely based upon traditional brick-and-mortar classrooms.

Without overreaching, it is safe to conclude that K-12 online education has a secure foothold in a world that requires a populace comfortable and competent with technology. At the same time, this article presents evidence of both the promise and peril of K-12 online education; that is, the promise of universal student access and the peril of romanticizing the ease of achieving it. If nothing else, this article lays the groundwork for a broad range of future research. For example, given the critical importance of K-12 online education, is it advisable from a policy perspective to have 50 fragmented approaches? Or, in an increasingly competitive global environment, is guaranteeing equity of access to K-12 online education a compelling national interest? If so, does this constitute a rationale for a new National Defense Education Act (NDEA),⁶⁴ one that moves beyond the original emphasis on the teaching of mathematics, science, and foreign language to expanding educational opportunity through online learning?



Endnotes

¹ Elementary and secondary online education is hereafter referred to as K-12 online education.

- ² Blackboard Inc., is a for-profit company which "...provides enterprise technology and solutions for the educational industry," *Bloomberg Business*, <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=25643>.
- ³ There is no common definition of "flipped learning." See, Robert Talbert, "Toward a Definition of 'Flipped Learning,'" *Chronicle of Higher Education*, April 1, 2014, <http://chronicle.com/blognetwork/castingoutnines/2014/04/01/toward-a-common-definition-of-flipped-learning>. Talbert noted that not only is there a lack of a common definition of flipped learning, there is also a lack of consensus as to how (or whether) to differentiate between a flipped classroom and flipped learning. In addition, he pointed out that a recently formed nonprofit organization is seeking to develop a comprehensive definition of flipped learning that emphasizes a flexible environment, a student-centered learning culture, intentional content, and "...a reflective, accessible instructor who collaborates with other educators and takes responsibility for perfecting one's craft."
- ⁴ Blackboard, "2013 Trends in Online Learning: Virtual, Blended and Flipped Classrooms," <http://whitepapers.blackboard.com/2013Trends>.
- ⁵ Clayton M. Christensen, Michael B. Horn, and Curtis W. Johnson, *Disrupting Class: How Disruptive Innovation Will Change the Way the World Learns* (New York: McGraw Hill, 2008), 103.
- ⁶ KnowledgeWorks was founded in 2000, and, according to its web site, "...has evolved first from an involved philanthropy focused exclusively in Ohio to become an operating foundation and finally a social enterprise engaged in work across the United States," <http://knowledgeworks.org/about/our-history>.
- ¹ KnowledgeWorks, "Recombinant Education: Regenerating the Learning Ecosystem," <http://knowledgeworks.org/future-of-learning>.
- ⁸ *Ibid.*
- ⁹ According to the Southern Association of Colleges and Schools, "...distance education is a formal educational process in which the majority of the instruction (interaction between students and instructors and among students) in a course occurs when students and instructors are not in the same place. Instruction may be synchronous or asynchronous. A distance education course may use the internet; one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices; audio conferencing; or video cassettes, DVD's, and CD-ROMs if used as part of the distance learning course or program" (p. 1). See, Southern Association of Colleges and Schools, "Distance and Correspondence Education: Policy Statement," January 2012, <http://www.sacscoc.org/pdf/Distance%20and%20correspondence%20policy%20final.pdf>. In contrast, "online education," also referred to as "online learning," can be defined as, "...learning that takes place partially or entirely over the Internet. This definition excludes purely print-based correspondence education, broadcast television or radio, videoconferencing, videocassettes, and stand-alone educational software programs that do not have a significant Internet based instructional component" (p. 9). See, Barbara Means, Yukie Toyama, Robert Murphy, Marianne Bakia, and Karla Jones, "Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies" (Washington, DC: U.S. Department of Education Office of Planning, Evaluation, and Policy Development Policy and Program Studies Service, September 2010), <http://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf>.
- ¹⁰ Edward Lin, "Virtual Schools: Real Discrimination," *32 Seattle University Law Review* 32:1:178.
- ¹¹ International Association for K-12 Online Learning, "Technology Assisted Project-Based Instruction Program," <http://www.inacol.org/research/docs/TAPBI.pdf>.
- ¹² Ambient Insight, "Ambient Insight's Learning Technology Taxonomy 2013," http://www.ambientinsight.com/Resources/Documents/AmbientInsight_Learning_Technology_Taxonomy.pdf.
- ¹³ International Association for K-12 Online Learning, "Technology Assisted Project-Based Instruction Program."
- ¹⁴ See, for example, "Research on the Effectiveness of Online Learning: A Compilation of Research on Online Learning," The Future of State Universities, September 2011, <http://www.academicpartnerships.com/sites/default/files/Research%20on%20the%20Effectiveness%20of%20Online%20Learning.pdf>.
- ¹⁵ See, Gene V. Glass and Kevin G. Welner, "Online K-12 Schooling in the U.S.: Uncertain Private Ventures in Need of Public Regulation" (Boulder, CO: University of Colorado, National Education Policy Center, October 2011), <http://nepc.colorado.edu/files/NEPC-VirtSchool-1-PB-Glass-Welner.pdf>.
- ¹⁶ Lin, "Virtual Schools: Real Discrimination."
- ¹⁷ "Repeaters" refers to students who must repeat a grade.
- ¹⁸ Office of the State Auditor, "Online Education," Performance Audit (Denver, CO: State of Colorado, November 2006), 2, http://extras.mnginteractive.com/live/media/site36/2006/1211/20061211_095903_HopePDF.pdf.
- ¹⁹ *Ibid.*, 3.
- ²⁰ Not all states have such prohibitions in their constitutions. In such cases, some states, like Florida and Alaska, have enacted law or administrative code that requires state-funded K-12 online courses and programs be nonsectarian in nature. See, Fla. Stat. § 1002.45; and Alaska Admin. Code tit. 4, § 33.441(h).
- ²¹ *Johnson v. Burmaster*, 744 N. W. 2d 900 [229 Ed. Law Rep. [859]] (Wis. App. 2007).
- ²² K12 Inc., also referred to as K¹², is a publicly traded for-profit business. See www.k12.com. Companies like K12 Inc. are also referred to as education management organizations or EMO's. However, it is important to note that the term EMO encompasses both nonprofit and for-profit entities.
- ²³ Andrew Trotter, "K12 Inc. Scraps India Outsourcing," *Education Week*, September 10, 2008, <http://www.edweek.org/ew/articles/2008/09/10/03outsourc.h28.html>. K12 Inc. was also an online education provider named in the Wisconsin litigation.

- ²⁴ Glass and Welner, "Online K-12 Schooling in the U.S."
- ²⁵ La. Admin. Code tit 28.
- ²⁶ § 2523; N.D. Cent. Code § 15-19-01.
- ²⁷ 105 Ill. Comp. Stat. 5/10-29.
- ²⁸ Ark. Code Ann. § 6-23-503.
- ²⁹ Luke J. Stedrak, Justin C. Ortagus, and R. Craig Wood, "The Funding of Virtual Schools in Public Elementary and Secondary Education," *Educational Considerations* 39 (Spring 2012): 44-54.
- ³⁰ *Ibid.*
- ³¹ Ariz. Rev. Stat. § 15-183.
- ³² Colo. Rev. Stat. § 22-30.7-108.
- ³³ Idaho Admin. Code r. 08.04.01.
- ³⁴ Okla. Stat. tit. 70, § 1210.722.
- ³⁵ Ala. Admin. Code R. 300-2-3.04.
- ³⁶ Alaska. Admin. Code tit. 4, § 33.460.
- ³⁷ Massachusetts Department of Education, "Recommended Criteria for Distance Learning Courses," September 2003, <http://archives.lib.state.ma.us/bitstream/handle/2452/113454/ocn752504049.pdf?sequence=1>.
- ³⁸ La. Admin Code tit. 28, § 2395.
- ³⁹ Minn. Stat § 124D.095.
- ⁴⁰ 105 Ill. Comp. Stat. 5/10-29(5).
- ⁴¹ Other states, like Minnesota and Colorado, include extracurricular participation in statutes related to K-12 online education. Minnesota law states that an "online learning student may participate in the extracurricular activities of the enrolling district on the same basis as other enrolled students." (See, Minn. Stat. § 124D.095.) Colorado also allows K-12 students in online programs to participate in extracurricular or interscholastic activities. (See, Colo. Rev. Stat. § 22-30.7-108.)
- ⁴² Ala. Admin. Code r. 290-3-1-.02.
- ⁴³ Alaska Admin. Code tit. 4, § 33.421.
- ⁴⁴ Cal. Code Regs. tit. §11963.5.
- ⁴⁵ Wyo. Stat. Ann. § 21-2-202.
- ⁴⁶ 2006 Mich. Pub. Acts no. 123.
- ⁴⁷ Mich. Comp. Laws § 380.1278.a.
- ⁴⁸ Ala. Admin. Code r. 290-3-1-.02(d)(4).
- ⁴⁹ Florida House of Representatives, "School District Virtual Instruction Programs," 2010-11 *Education Fact Sheets*, 269-273, http://www.myfloridahouse.gov/FileStores/Web/HouseContent/Approved/Web%20Site/education_fact_sheets/2011/documents/2010-11%20School%20District%20Virtual%20Instruction%20Programs.3.pdf.
- ⁵⁰ Mo. Rev. Stat. § 162.1250.
- ⁵¹ Alaska Admin. Code tit. 4, § 33.421.
- ⁵² Me. Rev. Stat. Ann. tit. 20-A: EDUCATION, §19152.
- ⁵³ Ariz. Rev. Stat. Ann. § 15-808.
- ⁵⁴ Idaho Admin Code R. 08.04.01.
- ⁵⁵ 36-000 Miss. Code R. 112.
- ⁵⁶ S.C. Code Ann. § 59-16-15.
- ⁵⁷ 105 Ill. Comp. Stat. 5/10-29(6).
- ⁵⁸ Idaho Admin. Code. R. 08.02.02.033.
- ⁵⁹ W. Va. Code R. § 126-48-4.
- ⁶⁰ Tex. Educ. Code. Ann. § 30.A.112.
- ⁶¹ Minn. Stat. § 124.D.095 (4)(f).
- ⁶² Ky. Rev. Stat. Ann. § 161.166.
- ⁶³ Colo. Rev. Stat. § 22-30.7-102.
- ⁶⁴ The National Defense Education Act of 1958 (P.L. 85-864; 72 Stat. 1580).