

Control of Public Schools

STATE AND LOCAL CONTROL OF EDUCATION

Public education is a federal interest, a state function, and a local responsibility. A federal interest is manifested through the passage of various federal statutes, such as Title I, Goals 2000, the Educate America Act of 1994, Education for Disabled Students, and No Child Left Behind, that affect the operation of public schools. These statutes are designed to create educational opportunities for students and to improve the quality of public education by creating greater accountability for achieving desired educational outcomes. The Tenth Amendment to the U.S. Constitution provides that the powers “not delegated to the United States by the Constitution nor prohibited by the Constitution to the states are reserved to the states respectively and to the people.” Thus, by virtue of the Tenth Amendment, the control of education is vested in the states and the people. The responsibility for the operation and control of public schools resides with the state. Unless restricted by state constitutions, state legislatures have the authority to govern public schools. Most state constitutions refer to the legislature as maintaining responsibility for public education. Although the state legislature has ultimate control over public schools, its control is not unrestricted but is subject to review by state and federal courts to ensure that the constitutional rights of citizens are protected.

The state legislature has plenary power to establish schools and to develop a unique system of public schools. This legislative power was illustrated in a very early Michigan decision wherein the U.S. Supreme Court held that the legislature has entire control over the

- schools of the state,
- division of the states into districts,

- conduct of the schools, and
- qualifications of teachers.¹

The subjects to be taught within each state are all within the state's control.² The power of the state to control education is derived from the state's police power, which presumes that the state is responsible for the health, safety, and welfare of its citizens. The police power of a state extends to the protection of the lives, limbs, health, comfort, and quiet of all persons and to the protection of all property within the state.³ State legislatures have the authority to govern education, and this authority involves both the legislative and executive branches of government and includes regulations that promote domestic order, morals, health, and safety.⁴

Students who enroll in public schools are subject to state laws and local regulations governing the operation of public schools. The state's police powers provide the state the authority to control education, including such matters as requiring compulsory attendance and immunization for children attending public schools. The state's police powers allow it to formulate rules and regulations designed to protect the health, safety, and well-being of all citizens. It is within this context that children are provided a free public education. Local school boards are delegated responsibility for the daily operations of schools within their districts and are subject to federal and state laws and state board of education policy, as well as federal and state constitutional mandates. The local school board is responsible for formulating school district policy that enables the district to operate effectively and efficiently in achieving its goals. Thus, federal, state, and local entities have established the context for public education in the United States.

State Board of Education

State boards of education are generally established by the state legislature. Normally, members are elected by popular vote and represent respective districts throughout the state. The board is responsible for policy development, general supervision, and control of public schools throughout the state. The board also appoints the chief state school officer.

Chief State School Officer

The chief state school officer is probably the most influential professional educator within the state. Appointed by the state board of education to a set term, the chief state school officer is usually the chief executive officer of the board.

His or her primary duty is to execute the educational policies of the state board of education and oversee the operations of public schools within the state to ensure their compliance with state board policy.

State Department of Education

The state board of education is authorized by the legislature to employ, upon recommendation of the chief state school officer, the professionals necessary to execute the policies of the board to facilitate the effective operation of public schools throughout the state. Although there are variations among states, most state departments consist of divisions of administration and finance, federal programs, disability services, student services, academics, legislation, research and evaluation, charter schools, teacher and leader effectiveness, professional standards, audits, and management, among others. The department provides services and support to local school systems in virtually all aspects of local school district operations.

Local Control of Public Schools

Local school boards, created by state statute, are expected to execute state and federal laws and state board policy governing the operations of schools under their jurisdiction. They also raise revenue through tax levies and school bonds to construct and maintain facilities, and to purchase equipment, supplies, and other items essential to the operation of schools. Although school board members act as agents of the state, they represent the district electors, parents, citizens, and communities they serve.

School board members are considered to be state, not local, officials because the education function is categorized as one of statewide responsibility. Local school board members are generally elected or appointed and hold office by virtue of legislative enactment. The state legislature also prescribes their powers, which may be broadened or limited at the legislature's discretion. Local board members may be required to meet certain residency requirements to qualify for election or appointment to the board of education.

Local school boards exercise powers, either implied or specified, to manage school districts, including rendering decisions regarding curriculum, although the legal authority for defining the curriculum of public schools resides with the legislature. Based on constitutional provisions, in a few states this duty is shared between the legislature and the state board of

education. The legislature may, at its discretion, prescribe the basic course of study and determine testing standards and graduation requirements. In most cases, state legislatures delegate curriculum matters to state boards of education and, most important, to local school districts. Local school boards are granted statutory powers that are essential to achieving their purpose. To a large degree local boards are delegated the authority to render decisions regarding curriculum and instruction within their districts, such as choosing and regulating curricula and course offerings, and determining curricula that are best suited for students. Local boards also make decisions regarding books and other educational tools including technology utilization. Based on delegated powers, many local school districts have established local school-based management councils that are empowered to make decisions in matters regarding curriculum and instructional practices, textbook selection, and choice of instructional materials. Local school boards are authorized to employ and dismiss personnel, construct buildings, and provide district-wide transportation.

The local board of education is the legal entity for school districts. The board acts as a corporate body. No single board member has authority outside that of the board as a whole. The local board of education is a policy-making body that has the responsibility to adopt policies and procedures for the organization and administration of schools within the district. School district policies are generally based on state statute. School leaders have the responsibility to execute these policies. The relationship between the board of education and its district leader is best described as a legislative–executive relationship. The board formulates policies, and the superintendent executes them. Because policies provide direction and guidance for teachers, it is imperative that teachers understand and adhere to policies that affect their professional duties. If the legality of a policy is challenged, the burden rests with the school district to defend its policy. However, lack of awareness of school and district policies does not protect teachers who commit policy violations. Teachers may be disciplined, based on the seriousness of the policy violation; penalties may include dismissal for acts that are contrary to board policy.

School boards may hold executive sessions to discuss sensitive matters such as employee discipline, contract issues, or consultation with attorneys. Only board members may attend these meetings. The intent of such meetings is to protect the confidentiality of sensitive information or of information that may damage a person's good name or

reputation. Consequently, all items discussed during executive sessions are confidential and should not be divulged by board members.

Discretionary Powers

The school board may exercise discretionary powers based on its judgment and is restricted only by statutory requirements. Examples of discretionary powers include establishing the school calendar, purchasing school buses, determining the location of school buildings, and adopting a salary schedule that exceeds the state's minimum salary schedule.

School Administrator's Role

The role of the local school administrator may vary from school to school, but most administrators are responsible for the day-to-day operation of their school. One of their top priorities is evaluating the success of the instructional program as well as teacher performance and effectiveness. The school administrator in conjunction with teachers is responsible for maintaining a safe and orderly learning environment where teachers teach and students learn. Additionally, the administrator ensures that instructional and curricula goals are achieved. Supervision, evaluation, and support of faculty are critically important to achieving desired goals of the school. The school leader generates tenure and dismissal recommendations, allocates adequate resources to achieve the school's instructional goals, oversees school curricula and extracurricular activities, and serves as an ambassador for the school and the district.

Teachers as Employees of Local School Boards

School districts are public corporations. Teachers are public employees who are employed by local boards of education in a contractual relationship and are agents of the school district in which they are employed. The board of education is the only entity that has the legal authority to employ or dismiss school personnel. In some instances, principals recommend teachers for employment positions within their respective schools to the superintendent of schools, but these recommendations carry no legal standing until the board of education approves the superintendent's recommendation. The superintendent has the prerogative to accept or reject a principal's recommendation. The board may also reject the

superintendent's recommendations as long as the rejection is nondiscriminatory and based on defensible criteria. Employment rejections that are arbitrary or capricious will not be upheld by the courts.

School District Rules and Regulations

Boards of education have the implied power to formulate and enforce rules and regulations necessary to facilitate the efficient operation of schools within the district. School board rules and regulations must be reasonable and consistent with state and federal constitutional provisions, but it is often difficult to determine the reasonableness of rules. The courts generally presume that the board's actions are reasonable. Since reasonableness is presumed, the burden of proof resides with the party who challenges board rules.

The presumption of reasonableness is established by the courts, based on the view that the role of the courts is not to make policy. However, the courts will not hesitate to review school rules and regulations when substantive challenges arise. A court will then determine whether the rules and regulations are arbitrary, capricious, or in violation of the constitutional rights of school personnel or students. A reasonable exercise of administrative authority will generally receive support by the courts.

School Board Meetings

School board meetings, as well as minutes of these meetings, are open to the public. Any citizens, including teachers, who desire to do so may attend board meetings. Most states have adopted "sunshine," or open-meeting, laws designed to ensure that the public is informed on matters of public interest. The only exception to open meetings occurs when the board meets in executive session to discuss matters pertaining to personnel issues and other sensitive legal subject matter.

GUIDES

Control of Public Schools

1. The federal government has an interest in public education through the enactment of statutes designed to improve education.
2. Public schools are state controlled by virtue of the Tenth Amendment to the U.S. Constitution.
3. The state legislature has complete authority to govern public schools, including, but not limited to, teacher

qualifications, curriculum matters, funding, and student graduation requirements.

4. Each state has police power, which creates a responsibility to protect the health, safety, and welfare of its citizens.
5. The power to control education is derived from the state's police powers.
6. School boards have specific or implied powers to administer schools within their districts.
7. Local school board members are considered to be state officers because education is a state function.
8. The school board as a policy-making entity has responsibility for guiding the district through development of legally defensible policies and procedures.
9. The local school board is the only entity that has the legal authority to employ or dismiss school personnel.
10. Teachers are public employees whose responsibilities are defined in a contractual relationship with the local school board.
11. Teachers have a leading responsibility to become familiar with and execute school or district policies, rules, and regulations.
12. Inadequate knowledge of policy is not a justifiable defense for teachers who violate policy.
13. Teachers may be disciplined, including being dismissed, for policy violations, according to the seriousness of the violation and its impact on the district.

PRACTICAL TIPS

Do:

1. Understand the rights and responsibilities associated with your teaching position. Awareness of your rights will provide guidance and direction and allow you to successfully execute your professional duties effectively.
2. Become familiar with school and district policies. Lack of knowledge will not provide relief from discipline for failure to perform your assigned duties and responsibilities.
3. Attend school board meetings periodically and become familiar with the issues and challenges faced by your district. Such familiarity may assist you in meeting district expectations successfully.
4. Understand your employment status as an agent of your school district, and understand the source of authority that you possess in your teaching position. Employment knowledge will allow you to operate within the boundaries of acceptable practice within your district.

Do not:

1. Ignore the governance structure of your school and district. It is necessary to follow the chain of command as you address issues and challenges that affect your employment position.
2. Violate school or district policies. Failure to adhere to these policies may form grounds for dismissal, depending on the consequences related to the violation.
3. Fail to recognize the type of behavior that is expected of teachers, who must exercise sensitivity regarding the professional image associated with teaching. Expectations may vary with the community in which you are employed.
4. Underestimate the importance of membership in local and national professional associations. They provide enormous benefits in all aspects of the teaching profession, including liability coverage.

ENDNOTES

1. *State of Michigan ex rel. Kies v Lowry*, 199 U.S. 233, 26 S. Ct. (1905).
2. *Child Welfare Society of Flint v. Kennedy School Dist.*, 220 Mich. 290, 189 N.W. 1002 (1922).
3. *Leeper v. State*, 103 Tenn. 500, 53 S.W. 962 (1899).
4. *Railroad Co. v. Husen*, 95 U.S. 465 (1877).