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# Legal and historical aspects of local school boards in North Carolina

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# LEGAL AND HISTORICAL ASPECTS OF LOCAL SCHOOL BOARDS IN NORTH CAROLINA

by

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**APPROVAL PAGE**

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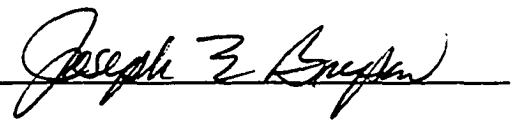
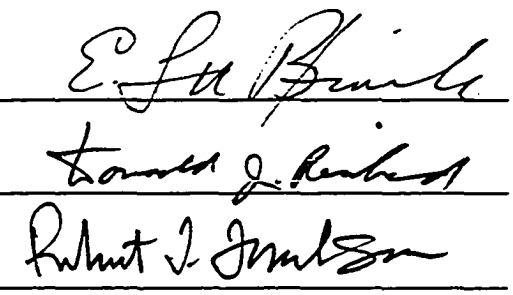
Dissertation Advisor 

Committee Members 

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This study provides an analysis of how both the historical evolution of local school boards within North Carolina and important court rulings from 1940 to 1992 have influenced modern school board functions. This analysis outlines how history and state and federal courts have helped to shape school board demographics and overall decision-making practices.

Based upon an analysis of the data the following conclusions are presented: The primary purpose behind the development of the local board of education has been and continues to be the education of children. The concept of the local school board has remained relatively unchanged over the last three hundred years. Adequate funding and accountability of representation continue to be critical issues facing local boards. School boards that fail to follow all requirements based upon procedural and substantive due process rights when dealing with student rights, discrimination, religion, teacher/employee rights, handicapped students, and school district financing run the risk of having legal action taken against them. The North Carolina State Board of Education maintains the authority to establish rules and regulations affecting local school board operations, but the state legislature is the primary source of law which affects board

operations. Lack of clear communication and cooperation between the board of education and other governmental agencies can create territorial power struggles within the school districts. Lack of communication and trust between the board and the superintendent and his or her staff can cause unrest and discord within the school district. The primary responsibility of every school board member is to assist in the development of effective educational policy. Mandatory training of school board members has the potential to improve board effectiveness by offering an opportunity for building networks, establishing data banks, and earning certification. Parental and community involvement in the schools is an important key to educational success. Board accountability will increase as a result attainment of missions and goals through self-evaluation, completion of district objectives, prudent selection and fair evaluation of the superintendent.

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# CHAPTER I

## INTRODUCTION

Public education, the foundation of America's governmental, social, and economic well-being, is based on the concept of local governance by school boards that are mostly elected (or in the minority of cases, appointed) to represent the educational priorities and objectives of their communities.

Although America has struggled to provide schooling for children ever since the Pilgrims landed, it was not until the mid-1880s that a national public school system worthy of the name came into being. Prior to the Civil War in the late 1850s, America finally fashioned a workable instrument for governing the schools. The instrument created for this purpose was the school board.

Local school boards acted as agents of the state which at the same time provided local citizens with a real voice in deciding the kind of education they wanted for their children--a system that worked very well with the experience of frontier communities that relied on themselves to find local methods for meeting local needs.

In the modern era, however, public education has grown to enormous proportions. When the Soviet Union launched Sputnik in 1957, America's education system went into high gear in an

effort to catch up with the Russians. In the 1960s, a period of educational growth began that has not ceased. In the 1990s, a renewed emphasis has been placed on the strategic importance of school board activity.

School boards remain a dynamic example of the American system of representative and participatory government. Yet, many citizens are unaware of the vital role boards play in public education. Some board members only partially comprehend the nature and extent of their important governmental function.

The current educational reform movement has highlighted the importance of school board leadership and policy making in educational improvement. Board members are being challenged as never before to fulfill their board responsibilities vigorously and effectively. Board members will succeed only if they recognize and appreciate the significance of their roles and gain the full understanding and support of the communities they serve.

Local school board responsibilities in North Carolina include the formulation and implementation of policies that directly influence the education of public school students. As a governing entity, local school boards direct through official actions the scope and emphasis of the local education process.

Many factors, including those of historical, political, and legal significance, influence the policy-making processes

of local boards of education. Other significant factors would be those that influence and define a board's structure and its criteria for membership. The importance and long-range effects of these criteria on the effectiveness of local school boards cannot be overstated. Local school boards form the nucleus from which policy is generated.

Criteria defining a local school board's structure and membership vary across the state and nation. Municipal or county boundaries define areas to be served and the areas from which members of the boards are to be selected. Membership demographics, partisan versus nonpartisan competition, and elected versus appointed members are important components in determining how a working board will process information into policy.

## Purpose of the Study

The purpose of this study is to examine the main factors which make local boards of education in North Carolina unique in the process or processes used in the formulation and implementation of school policy.

The purposes are:

1. To review the historical development of local boards of education and how this development relates to educational governance within the state.

2. To analyze significant legal cases affecting local school boards' decision-making practices, and the internal operations of the affected boards.
3. To examine local school board demographics, including membership demographics, elected versus appointed boards, partisan versus nonpartisan boards, overall board structure, and the number of city versus county school boards.
4. To analyze the present and future status of local boards and investigate any relationship which may or may not exist with the overall educational processes.

This study intends to examine the role of board membership in a particular governing body, the importance of fulfilling that role, and the urgency of making informed, enlightened decisions that will improve the overall educational environment for students, teachers, and administrators.

## Questions to be Answered

Certain questions arise about the historical evolution of local school boards as well as about state and federal court decisions that have affected modern board processes. The study will answer the following questions:

1. What is the historical basis for operations of local school boards in North Carolina?
2. How do local boards of education in North Carolina vary in composition?
3. As a result of N. C. General Statute 115C-50, what are the legal and legislative issues pertaining to mandatory training for school board members?
4. Are there judicial decisions which influence or control school board policy making for the prevention of litigation?
5. What determines whether a school board or its members are perceived as performing as expected by its constituency?
6. Is the local school board's accountability increasing or decreasing as a result of immunity from tort liability?

## Significance of the Study

Local boards of education in North Carolina were established to formulate and oversee policy that directs the process of public school education for students in North Carolina. This mission remains unchanged. However, the historical evolution of school boards, coupled with federal and state court decisions over the years, has influenced the processes used by school boards to make and enact policy.

This study is significant because it provides an analysis of how both the historical evolution of school boards and important court rulings since 1940 have influenced modern school board functions. The analysis outlines how history and the courts have helped to shape school board demographics, overall structure, and decision-making practices. Important insight is provided about why various local boards of education in North Carolina function differently. The study examines processes for decision making and provides guidelines for prospective board members as well as current board members with salient points for consideration in making decisions that are practical, reasonable, effective, and sound.

Local boards of education in North Carolina have historically experienced a broad scope of authority in the power to structure and implement policy. Certain aspects of the education function have and will continue to be classified as a statewide responsibility. Local board members hold office by virtue of legislative enactment. These powers may be extended or limited at the discretion of the state legislature. This factor could possibly have a direct positive or negative influence upon board effectiveness, and could be a reason that some school boards are perceived as ineffective by the voting public. Board member turnover rate remains significantly high, related perhaps to the dissatisfaction theory generated by the general public toward anyone who holds elected (or sometimes appointed) office.

Separate from the state in both function and technical operation, local school boards experience greater freedom in decision making. However, the effectiveness of this decision-making function is closely linked to state regulations and budgeting appropriations and constraints.

Since 1985 and the introduction of Senate Bill II, the state has allowed local boards of education to increase their autonomy. While certain educational functions will remain a responsibility of the state, local school boards are forming stronger alliances with county and municipal governments in order to increase resources making up for reduction in state funds. Current expense and capital outlay requests will continue to increase in order to replace outdated equipment and school buildings. County commissioners and city aldermen will be asked to supply the lion's share of funds necessary to fulfill a mission of providing a quality public education system within the jurisdiction they serve. As a result, local school boards will become even more accountable to their constituencies. This factor underscores the need for decision making that is reasonable, effective, prudent, and dependable as viewed by the voting public.

## Methods of Procedure

The study uses both legal and educational resources to obtain appropriate material for the composition of this dissertation. Sources include the following: United States

Reports, The Federal Reporter, N.O.L.P.E. Yearbook of School Law, N.C. Supreme Court Decisions, and the General Statutes of North Carolina. Court cases focusing on school board actions involving personnel, property, and policy were examined as reported in the National Reporter System. This system consists of a compilation of cases in volumes called Reporters which report decisions rendered by the United States Supreme Court, the United States District Courts, the United States Courts of Appeals, and state appellate courts. Court cases from the North Carolina School Law Bulletin were also examined. Emphasis was placed upon case relevance regarding guidelines followed by local school boards in establishing proper legal procedures during policy formulation and implementation. Thirty-one cases that have been litigated since 1940 will be examined in this dissertation.

## Definitions of Terms to be Used

Local school boards in every state vary in size and stature. They often vary in operational procedure with slight variance in terminology. For the purpose of clarification in this study, the following terms are defined:

> Socratic Discussion. The contribution of words, phrases, and ideas toward the solution of a common problem. Anyone may contribute related information or ideas. No value judgments or criticisms are made during these discussions.

Metacognition. One's own ability to plan a strategy for producing information that is needed for problem solving, and to reflect upon and evaluate the productivity of one's own thinking. Metacognition is a self-monitoring technique in problem solving.

Politics. The act or science concerned with guiding or influencing government policy, political actions, practices, or policies. The total complex of relations between people in society.[1]

Policy. Prudence or wisdom in the management of affairs; a definite cause of action or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions.[2]

Accountability. Subject to giving an explanation or account of actions; to probe into.[3]

Governance. The continuous exercise of authority over and the performance of functions for a political unit; the body of persons that constitutes the governing authority of a political unit or organization; authoritative direction or control.[4]

Redistricting. To divide areas into districts; to revise legislative districts.[5]

Tort Liability. Pecuniary actions taken that place some boards of education in liable situations for possible civil actions involving a breach of contract.

NC General Statute 115C-50. Provides for mandatory training of school board members and suggests that all members

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[1]Webster's New Collegiate Dictionary, 911 (Springfield, Mass.: G. & C. Merriam Company, 1984).

[2]Ibid., 910.

[3]Ibid., 50.

[4]Ibid., 529.

[5]Ibid., 987.

of local boards of education shall receive a minimum of twelve clock hours of training annually. The training shall include, but not be limited to public school law, public school finance, and duties and responsibilities of local boards of education. The training may be provided by the North Carolina School Boards Association, the Institute of Government, or other qualified sources at the choice of the local board of education.

## Design of the Study

Chapter II examines the historical evolution of local boards of education in North Carolina. To that end, the chapter examines (1) the historical basis of the development of local boards and how key elements of state history have affected the overall board operations used in the education process; (2) the role and responsibilities of school "committees" under the Lords Proprietors and royal rule; and (3) the development and impact of the state's Academy Movement, the Literacy Fund, Reconstruction after the Civil War, and the state's first constitution on education and on the development of school boards as they are known at the present time. The evolution of mandatory training for school board members by the North Carolina General Assembly is also discussed.

Chapter III examines the concerns and issues facing local boards of education. Current school board demographics are

presented and discussed, including elected versus appointed boards, partisan versus nonpartisan elections or appointments, city versus county boards, and significant structural differences among boards across the state. The study will also analyze how redistricting and the Federal Voting Rights Act have affected the counties within North Carolina that are required by law to redistrict.

Chapter IV examines relevant state and federal cases pertaining to school boards from 1940 to 1992. This period encompasses some of the most significant cases decided by the U. S. Supreme Court. These cases will be the primary focus of this portion of the study. A superior court case involving a local school board is examined, along with other significant North Carolina court cases affecting education. United States Supreme Court decisions appear in chronological order. The legal significance of the cases merits their use. Each case is analyzed and significant judicial points are explained.

Other state and local cases are referred to throughout the study for emphasis on key issues pertaining to board practices.

Chapter V contains a review of the purposes of this study, answers the questions asked within this study, and presents conclusions and suggestions for school boards on conducting educational business more efficiently. Recommendations for further study are also included.

## CHAPTER II

## REVIEW OF THE LITERATURE

Although the American school board had very simple beginnings, it holds the key for the continuation and improvement of public education.[6]

The local school board of 1992 originated in colonial New England. Initially, when the settlements first started in America, families were responsible for the education of the children. However, since many citizens felt that the children were not being properly instructed, legislation was enacted as a solution to the problem. The Massachusetts Law of 1642 provided officials with the authority to fine those parents who failed to teach their children. Five years later "The Old Deluder Law" was passed which required that the towns with 50 or more households hire a teacher for reading and writing. A second part of that law required that towns with 100 or more households set up Latin Grammar Schools. The laws provided the basis for modern compulsory education.[7]

Initially, decisions about the operations of the local schools were made in town meetings. However, as the school

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[6]Keith Goldhammer, The School Board (New York: Center for Applied Research in Education, 1964), 8.

[7]Ellwood P. Cubberly, Public Education in the United States (New York: Riverside Press, 1934), 17-18.

population increased, the responsibility for school management was delegated to a committee of local government. Finally, public officials were elected or appointed simply to oversee the operations for the schools. This school committee became today's school board.[8]

Zeigler, Tucker, and Wilson outlined five important phases of school control. Phase I (1835-1900) was identified as the period of "maximum feasible participation." The control of the schools, actual as well as legal, rested with the local boards of education. During this period there was ample opportunity for local citizens to provide input for their board members. This accessibility was due to smaller school districts and the unusually large membership per school board. These Phase I boards achieved greater representation and were more responsive to the needs of the public. A majority of the board members felt that they were responsible for the administration of the schools.[9]

The Progressive Movement introduced reform into urban politics. Thus, Phase II (1900-1968) marked the beginning of the decline of lay control in the local schools. One aim of these changes was to replace political influence with scientific management. This period saw control of local

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[8]Peter J. Cistone, ed., Understanding School Boards (Lexington, Mass.: Heath, 1975), 19.

[9]L. Harmon Zeigler, Harvey J. Tucker, and L. A. Wilson, "How School Control Was Wrested from the People," Phi Delta Kappan 58 (1977): 534-35.

schools assumed by local professionals and the advent of school centralization. The role of the superintendent was expanded while the role of the school board was contracted. Also, usage of experts gained wide acceptance.[10]

Near the end of this phase, different demands were placed on the school boards. In 1954 the federal government through Brown v. Board of Education demanded that the schools serve as agents of social change, while the minority populations demanded that the schools be more responsive to their needs. It was considerably less difficult for the schools to resist the minority groups than to resist the mandates of the federal government.

Phase III (1954-1975) was characterized by a transfer of legal authority of the local boards to various agencies of the federal government, and Phase IV (1976 to the present) reflected the expansion of state and federal bureaucracies. Zeigler, Tucker, and Wilson felt that school control had been "wrested from the people," and that this era might bring about a complete separation of the local school and its public.[11]

While the state has the legal responsibility for the operation of schools, most of this responsibility rests with the local board. Thus the local school board exercises its legal authority as it acts on behalf of the state regarding

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[10]Ibid., 534-37.

[11]Ibid., 534-39.

children of the schools.[12] Until the middle of the nineteenth century, the school board served as a legislative and executive body. As educational institutions became more complex, separation of these functions was necessary. Today, the board of education is viewed as the legislative, rather than the executive agency.[13]

Since education is not mentioned in the United States Constitution, the responsibility for public schools is seen as a state function. The Tenth Amendment specifically states that all powers not delegated or enumerated as federal are state powers.

Reeder stated that there is no public position, at least of a local nature, that is more important than that of a board member. The citizens of the next generation are determined by the schools of today and the school boards largely determine what the schools are.[14]

Barnhardt suggested that the purpose and the function of education must change in response to social reorganization and

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[12]Goldhammer, 9.

[13]Stephen J. Knezevich, Administration of Public Education, 2d ed. (New York: Harper and Row, 1969), 232.

[14]Ward G. Reeder, School Boards and Superintendents (New York: MacMillan, 1954), 1.

technical development. Therefore, the role of the board of education must also change in response to these forces.[15]

## Historical Analysis of Local School Boards in North Carolina

Colonial rule by the Lords Proprietors constituted a very slow intellectual and educational growth period in the Carolinas. Settlers from the northern colonies were gradually beginning to migrate into the southern regions, especially into the Albemarle Sound area of North Carolina. Sir Walter Raleigh's failed attempt at settling the Outer Banks and the successful colony at Jamestown, Virginia in 1607 indicated the interest in that area of the state. The Albemarle Sound region was first settled around 1663 with further migration continuing until 1728.[16] Most of the migration stemmed from Virginia, more so for economic than for religious reasons. During the mid-1600s, Bacon's Rebellion prompted several other migrations into the Albemarle Sound area. Then Governor Berkley of Virginia, who resisted the rebellion, termed the settlers moving into North Carolina "rogues, runaways, and rebels" for not supporting his and the Lords Proprietors' edicts. However, even though migration was occurring, the

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[15]Michale Lynn Barnhardt, "The Role Perception of Board of Education Personnel" (Ph.D. diss., Miami University, 1981), 15.

[16]Edgar W. Knight, Public School Education in North Carolina (Cambridge, Mass.: The Riverside Press, 1916), 1.

slow development of the Albemarle region was attributed directly to the slow growth of the population.[17]

In 1663, William Drummond became the first "governor" of the Albemarle region. His commission extended over 1600 square miles of territory. There were approximately 4,000 people in the area by 1675, and by 1728 the population had grown to approximately 10,000[18]. The first teachers in the colony were the lay readers in the churches. The religious influence over the schools can be observed during this period, similar though not identical to that of the Massachusetts Bay Colony. The Society for the Propagation of the Gospel in Foreign Parts (1701) initiated the Vestry Act of 1701 and later the Vestry Act of 1715 in an effort to educate the poor children and orphans of the Albemarle area. The Episcopalians were very influential in the development of church-schools within the region.

In 1705, Charles Griffin arrived in the Albemarle Sound area from the West Indies. Settling near Pasquotank, Griffin became the colony's first professional teacher.[19] He taught in the area for approximately three years before moving on to the Chowan area around 1709. Griffin was influenced heavily by the Quakers in the Chowan area and later was converted from

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[17]Knight, 2.

[18]Ibid.

[19]Ibid.

Episcopalian to Quaker. He later opened a school for Indians near Christina, Virginia, and became a friend to the local tribes of the area. Griffin eventually fell from favor with the local Indian chieftains and left to become a professor at the College of William and Mary near the Jamestown settlement where he remained until his death.[20]

The Episcopalian influence over the area's first schools can be noted at several other locations.[21] In 1705, the first public library was begun by an Episcopalian minister by the name of Thomas Bray in Bath. There was also a library started in Edenton by a Mr. Edward Mosely. A private school was started near the settlement of Sarum near the Virginia border in 1712, but this school apparently did not remain in operation very long.

The main educational theme of the early 1700s was the care and education of the poor, a common concern in Virginia of the aristocratic people that spread naturally into North Carolina. Apprenticeship and "poor-relief" laws were passed by the local governments in an effort to extend proper care to the poor and orphaned children. This practice is evidenced by the following passage from a document of one of the local residents dated April, 1698:

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[20]Knight, 7.

[21]Ibid.

> Upon ye peticon on Hon. Eli Thomas Harvey Esq. ordered YT WM YE son of Timothy Pead late of the county of Albemarle decd. Being left destitute be bound unto ye Thomas Harvey Esq. and Sarah his wife until he be at ye age of twenty one years and the said Thomas Harvey to teach him to read.[22]

In 1715, the Assembly enacted a law providing for the orphans and poor children of the state. Later, this led to another edition of the Vestry Act which transferred the authority from the vestrymen (church officials) to the "overseers of the poor" when dealing with their personal affair and care.

By the mid-1700s, North Carolina was beginning to make progress in many directions. In 1749, the first printing press was introduced to the state.[23] Laws were printed and distributed or posted so local residents could read about the State Assembly and current events of the time. By 1754, the Lower House of the Assembly had promised the Governor to take measures to promote the "virtuous education of our youth" by appropriating the sum of $6,000 as a building fund for a school. Later, a reasonable tax on "each negro" was promised to supplement the liberal offer of George Vaughn, an English merchant, who agreed to "give $1,000 yearly forever" to promote education among the Indians of the province, but later

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[22]Knight, 19.

[23]Ibid.

conditioned the offer so that "all of His Majesty's subjects in North Carolina" would be taught.[24]

In 1745, the town commissioners of Edenton were authorized by the Assembly to build a school house in a public place to be controlled by the church, local commissioners, and private citizens. An edict was passed by the town commissioners to build the school, but for some reason a school was not built until 1770.[25]

Scotch-Irish migration into the colony prompted the formation of many private schools throughout the settlements. German migration, especially from the Pennsylvania area, began to increase the Moravian as well as Quaker influence on the education of colonial children. Tate's Academy (1760) near Wilmington became the first classical school in the colony. Crowfield Academy (1760) was started in Mecklenburg County near what is now Davidson College. Dr. David Caldwell began his "log college" near Greensboro in 1767.[26] Caldwell was known as one of the most illustrious educators of his time. His school was known to have educated many of the state's governors, physicians, congressmen, and lawyers of that era. It incorporated not only an academy, but also a college and theological seminary.

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[24]Knight, 35.

[25]Ibid.

[26]Ibid.

North Carolina's first known public school originated in the town of New Bern, the provincial capital.[27] "The Incorporated Society for Promoting and Establishing a Public School in New Bern" initiated efforts to put a tax on all rum and other liquors brought into the Neuse River for seven years. This was the first public school incorporated in North Carolina and became the first law of any great importance passed in the colony on the subject of education.[28]

In 1770, the town of Edenton, acting on an earlier provision by the Assembly to build a school, vested the title to the school property to a board of seven trustees, namely, Joseph Blunt, Joseph Hewes, Robert Hardy, Thomas Jones, George Blair, Richard Brownrigg, and Samuel Johnson. All were Episcopalians. They were commissioned to oversee the erection of the school and allowed the use of town treasury (as well as some of their own money) to hire a teacher of the "established church." This school became the first known state-aided school under management of Episcopalian trustees, and there was no further taxation at that point.[29]

A new type of educational institution called the "academy" began to flourish during the time of the American

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[27]Ibid.

[28]Ibid., 36.

[29]M.C.S. Noble, A History of the Public Schools in North Carolina (Chapel Hill: UNC Press, 1930), 13.

Revolution. Similar in nature to today's public high schools, the academies provided secondary education from the Revolutionary period until the mid-1800's when public high schools began to merge. Latin grammar schools were copied from the English types and were narrow in curriculum, but were considered to be college preparatory. The following statement best reflects the theory of education at the time:

> Just as our modern public school system cannot be adequately understood except in the light of colonial conditions, so also must colonial custom and practice be explained in view of European antecedents. This applies to education in all the English colonies, and especially in Virginia and the Carolinas, where the general mental attitude toward education in colonial days was similar to that of the mother country.[30]

The academies were usually private and given state support, but tuition was collected and not always in money. No degrees were awarded, but diplomas and certificates were issued to graduates. Private donations were common in efforts to keep the academies in operation. More money meant better teachers and wider ranges of curricula to offer the students. Money was sometimes raised by lotteries held within the communities. Science Hall (1779) in Hillsboro was an example of this practice and was allowed because of its being able to form a corporation, have its own board of trustees, and issue diplomas and certificates. Smith Academy (1782) in Edenton

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[30]Knight, 14.

was started by a private donation from Robert Smith, a local lawyer and merchant. Granville Hall (1779) in Granville County was started through the efforts of Richard Caswell, then Governor Abner Nash, and Thomas Benberry. These gentlemen, the leading trustees of Granville, were also noted as Speaker of the House and President of the Senate in the General Assembly at that time.[31] The influence of the church over the schools was still strong since the clergymen were the best educated and made the best teachers. For example, "David Kerr received $400 for teaching and $400 for preaching while he was principal of Fayetteville Academy in 1794."[32]

During the second half of the eighteenth century, the Moravians began settling a 400-acre tract of land near Winston-Salem in Forsyth County. The land was originally bought from the Earl of Granville. Settlements in Bethania and Salem eventually led to schools being started in both areas. Salem School (1772) eventually developed into Salem Female Academy and later into Salem College as it is known today. The Moravian Church influenced the governance of these schools. Members had to petition the Moravian Conference for particular actions taken on school business affairs. The so-called "church-schools" by the Moravians promoted public interest in a general education program under control of the

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[31]Knight, 45.

[32]Knight, 57.

state. This program, as it was suggested, would organize, administer, and finance a system of schools that would reach every child within the borders of North Carolina.[33]

Several prominent academies flourished across North Carolina during the 1700s. Clid's Nursery and Science Hall, was started by Dr. James Hall who was a teacher and preacher in Iredell County.[34] The Zion Parnassus (1785) was a Presbyterian school of influence started at Thyatira near Salisbury by the Reverend Samuel C. McCorkle. This school was best known for its "normal" or teacher-training department. It is believed that his school was one of the first in the country to educate teachers. Others of interest were the Providence Academy (1792) near Charlotte started by Reverend James Wallis, and the Poplar Tent Academy (1778) in Cabarrus County, founded by the Reverend Robert Archibald.[35]

## Education, School Boards, and North Carolina's First Constitution

A Provincial Congress was called at Halifax Courthouse on April 4, 1776 to establish a new Constitution for the state. On April 20, 1776, after meeting daily for nearly two weeks,

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[33]Noble, 24.

[34]Ibid.

[35]Knight, 40.

the president of the Congress, Samuel Johnston, wrote (to James Iredell):

> We have not been able to agree on a Constitution. We have a meeting on it every evening, but can conclude nothing. The great difficulty in our way is, how to establish a check on the Representatives of the people, to prevent their assuming more power than would be consistent with the liberties of the people; such as increasing the time of their duration and such like . . . Afterall, it appears that there can be no check on the Representatives of the people in a democracy, but the people themselves; and in order that the check may be more efficient, I would have annual elections.[36]

On November 10, 1776, it was written into Article XLI of the State Constitution:

> That a School of Schools shall be established by the Legislature for the convenient instruction of youth, with such salaries to the Masters paid by the Public, as may enable them to instruct at low prices; and all useful learning shall be daily encouraged and promoted in one or more universities.[37]

As a direct result of this action, the University of North Carolina was chartered in 1789. It formally organized a few years later and graduated its first class in 1798.[38]

In the following years, a "lack of communication that existed between the eastern and western counties produced sectional jealousies which unhappily prevented development of

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[36]Noble, 25-26.

[37]Noble, 27.

[38]Ibid.

a common educational interest."[39] The movement for a popular educational system was also delayed because of an absence of proper qualifications and lack of professional spirit among teachers. Although development of public instruction was slow, the movement did begin early and flowed steadily. By the early 1800s, North Carolina had a fairly reputable educational system in place.

On Saturday, November 29, 1817, a state senator from Orange County named Archibald D. Murphy gave a report from an educational committee which he chaired. The report provided for a "Board of Public Instruction" to be elected and set up by the Legislature. It would consist of six members "three from the East of Raleigh and three from the West of Raleigh." Their duty would be to locate all schools and academies, to provide rules for the promotion of pupils, and to see to it that no academy should be established until there was a primary school provided for. Full control of the schools would be in accordance with later reports.[40] Trustees of the academies and schools could continue in office and act under whatever regulations might be adopted for the governance of academies. Murphy would later be recognized as the "Father of Common Schools" for his contributions toward the establishment of a common educational system in North Carolina.

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[39]Knight, 66.

[40]Noble, 36.

## The Literary Fund

Then, as now, funding was a particular problem for the educational system. A special fund was established by the General Assembly in 1825 to help finance the new common schools movement. It was called the "Literary Fund," financed with tax money and supervised by a subcommittee within the General Assembly. Shortly before the Literary Fund was established, William Martin, a Pasquotank County legislator and member of the Senate Committee on Education, introduced a bill to establish and regulate schools in counties across North Carolina. Schools were to be established in each of the state's "military districts." The county courts were to appoint "five persons of competent skill and ability" to have direction of school affairs within the various counties. Three local trustees appointed by the county directors were to employ the teachers and "designate such poor children in their neighborhood as they shall think ought to be taught free of charge."[41] A property tax of 10 cents per $100 dollars was then introduced to cover expenditures, but the House postponed the bill indefinitely.[42]

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[41]Knight, 76.

[42]Ibid., 77.

Taxation was again the critical issue during the early 1800s. In an 1824 address to the General Assembly, then Governor Holmes wrote:

> Surely, then, we cannot, consistent with good policy, hesitate to create a fund that will assist the parents of every denomination to initiate their offspring in elementary rudiments of learning. . . They would gladly receive and greatly appreciate or acknowledge your patronage for the improvement of their families. They have a right to fully anticipate your fostering care. . .[43]

The democratic principle that education was the function of the state rather than a family function or parental obligation developed as the responsibility of providing means rested more and more with the state. Also, the state had the power and the right to raise by taxation on the property of its members sufficient funds for adequate school support.[44] Both of these reasons contributed to the Literary and School Funds' establishment. This fund promised a means of escape from taxation for schools and relief to towns and communities from the tax burden.

One of the main purposes of the Literary Fund was to build schoolhouses. Initially, the Governor, Chief Justice of the North Carolina Supreme Court, President of the Senate, Speaker of the House, and the State Treasurer were on the committee to administer the fund. The money was to be on a

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[43]Ibid., 84.

[44]Ibid.

matching basis which created local school support. As one could easily imagine, there was much "gerrymandering" going on in efforts to secure funds. Finally, in 1836, the Fund was greatly increased by the distribution of surplus revenue in the federal treasury.[45] However, poor management and misappropriation of the monies within the Fund led to its ultimate demise in later years. School taxes were again levied to raise money for the Fund, and there was also a failed attempt to initiate a state lottery system.

The initial Literary Fund would later meet its fate during the Civil War. Even though the fund was not largely invested in Confederate securities, the banks that held the monies were. The failure of the banking system of the South in 1865 created a loss from which the Fund would not recover. For example, the total income for the Fund in 1866 was only $776.[46] A new Fund would later be introduced by virtue of a new state constitution. This later Fund would figure prominently in the funding of local boards of education after the turn of the century, especially the 1931-33 funding bills. Assemblyman William W. Cherry's bill, introduced in January 8, 1839, dealt with the organization and administration of the schools and read.

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[45]Ibid.

[46]Knight, 85.

> The county court in each county at first session after the election should elect not less then 5 nor more than 10 persons 'as superintendent of common schools' for the county. The superintendents were to divide the county into districts not more than six miles square provided that no greater number of districts should be laid off in any county than shall be equal to one for every six miles square of inhabited territory in said county.[47]

The superintendent was also to appoint not less than three nor more than six "committeemen" in each district to assist in "all matters relating to the establishment of schools for their respective districts."[48] There was no provision for a central controlling head of the system to guide and direct either the county superintendents, school committeemen, or the teachers.

The Second School Law of 1841 was an attempt to assign enlarged duties and powers to the "Boards of Superintendents of Common Schools" and the school committees. It was to provide for all possible needs that might arise. This was a step in the direction of almost complete control of the county public schools which is exercised by the county boards of education of the present. It was the beginning of school legislation that has developed through the decades, focusing on the common schools of the past while merging into the educational system of the present.

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[47]Noble, 61.

[48]Ibid., 62.

The First School Law in North Carolina was passed in the legislative session of 1838-39.[49] In it, the district committeemen were to be appointed by the Board of County Superintendents of common schools. The Law of 1842 was set up so that the committeemen could be elected by the people. In case of no election, the Board of County Superintendents would appoint the local school officers. The records of the years that followed show that the people as a whole did not care to elect their committees. In many districts, they failed to hold the elections, and in many other districts only three or four voters would go to the polls on election day. An election in Johnston County was typical of the interest taken by the people in the election of school committeemen. Five voters went to the polls and voted for three committeemen. Two residents of the district not present at the election received five votes, the total number cast. The third committeeman elected was one of the voters taking part in the election, and he received only five votes, thus showing that he did not vote for himself.[50]

**The Foundations of Public Education**

Knight suggested that there were three distinct periods of educational development in the United States. Up to the

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[49]Ibid.

[50]Knight, 142.

mid-1700s, there was a transplanting of the European institutions and customs into the colonies.[51] An attempted modification or adaptation to meet demands of a new and different environment existed from the mid-1700s up to the mid-1800s. The mid-1800s became a time for building the educational system to meet new conditions of the nation itself. Jeffersonian democracy was rapidly culminating. A separation of public education from ecclesiastical or church control was occurring, and gradual development of local control with democratic operations was taking place. Control of the public schools was passed over to the state. The academies were changed into public secondary schools, and colleges became mostly nonsectarian. State universities were organized and developed through various land grants. However, an obvious defect of the system was a distinct lack of any efficient supervision.[52]

During the mid-1800s, the North Carolina General Assembly established many boards and committees in efforts to improve education within the state. A Literary Board was established to administer the Literary Fund, to distribute proceeds to counties, and to issue blank report forms to counties for data collection. Boards of County Superintendents were set up to establish boundaries of school districts, hear appeals from

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[51]Ibid., 157.

[52]Knight, 159.

districts, distribute shares of school funds to districts, administer the supervision and control for the school interests in the county, receive reports from school committees for transmittal to the Literary Board, and make reports to the Literary Board.[53] The School Committees were established to employ teachers, visit schools, care for the school facilities, gather statistics and data for the Board of Superintendents, and maintain general local supervision of the school in the district.

The common schools were under the joint control of what was termed as a "tri-board" system.[54] The Literary Board controlled and directed the Board of County Superintendents, which controlled and directed the school committee, which was the local body of control within the district. However, nowhere along the chain of command was there the touch or directing hand of any single officer charged with any definite and effective administrative powers.[55] With each new legislature, additional duties were assigned to either the Literary Board, the Board of County Superintendents, or the school committees, and sometimes all branches of the school administration.

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[53]Ibid.

[54]Noble, 84.

[55]Ibid.

The chain of command required school information to be reported by the school committee to the Board of County Superintendents, who were to send a full report for the county to the State Superintendents and who were to send a full report for the county to the State Superintendent in Raleigh.[56] In the event of a failure to report by the committee, a fine could be levied which was to be given to the school fund in the district in which it was collected.

Other education bills that were passed by the General Assembly prior to 1860 authorized the Boards of Superintendents to appoint examining committees of not more than five members to examine the moral and mental qualifications of all teaching applicants. The appointment of school committeemen continued to be done by the Board of County Superintendents. The County Court, upon recommendation of the Board of County Superintendents, was authorized to levy annually an additional tax of $250 for the purpose of employing some suitable and competent person to visit at least once a year every school district in the county.[57] The Legislature of 1850-51 repealed the previous Law of 1848-49 with the power to appoint school committeemen, taken from the Board of County Superintendents, and the former method of electing school committeemen by public vote was reestablished.

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[56]Ibid.

[57]Noble, 86.

Committeemen were appointed (by the superintendent) only if the people failed to elect them.

W. K. Martin, a Representative from Franklin County (1846-47) endeavored to "exempt school committeemen from working on public roads and from the performance of military duty except in time of insurrection or invasion."[58] In view of the difficulty of getting citizens to serve as committeemen, the passage of the act might have made the position very popular with the voters in a district. Unfortunately, the bill did not pass.[59]

G. G. Holland, a representative from Cleveland County (1850-51), presented a memorial from his constituents begging that "no school committeeman be allowed to board a teacher whilst teaching school."[60]

George H. McMillian, a senator from Onslow (1850-51), offered an amendment to the school law by which the Board of County Superintendents was empowered to authorize the committeemen to appropriate a portion of their school fund "to purchase suitable books" for their schools. This action suggests the efforts to provide free textbooks in the common schools.

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[58]Ibid., 85.

[59]Ibid.

[60]Ibid.

The establishment of these public school laws was a valiant effort at creating a uniform system of public schools. However, the system was disappointing during the 1840s.[61]

In 1924, a package of old reports sent to the Literary Board during the late 1840s was found in the basement of the State Department of Public Instruction in Raleigh.[62] The forms were signed by the chairmen of the Boards of Superintendents from all fifty counties. These forms were valuable in that they shed light on the system in operation in every section of the state, from the mountains to the coast, during the first decade of the state's common schools. The reports were incomplete. The chairman's failure to send in a complete report was due to the fact that he had been unable to get reports from the school committeemen out in the districts. Many chairmen referred to the negligence of the committees. One chairman even sharply criticized his committee for neglect of duty. Another chairman reported that it had been impossible to find in his county men of business experience qualified and willing to serve on all the committees in the several districts.[63] The reports indicated a lack of supervision by a competent school person at the head of the

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[61]John W. Easterly and Jo Ann Williford, An Outline of North Carolina History (Raleigh: N. C. State Department of Public Instruction, 1979), 70.

[62]Ibid.

[63]Noble, 124.

system, irregular attendance of pupils, and alleged apathy of the people. One comment stated "The wonder is that the schools lived at all during the first decade of their existence."[64]

Superintendent Calvin H. Wiley (1819-1889) probably did more to revitalize the public school system than anyone during that time period,[65] among which were the following practices that improved the state's common schools:

a. Certification of teachers after examination.
b. Improvement of textbooks.
c. Better buildings and equipment.
d. Establishment of school libraries.
e. Beginning of graded schools.
f. Formation of teacher's library associations.
g. Founding of an educational association in North Carolina.
h. Increase in the number of schools, pupils, and teachers, as well as increased funding.[66]

Wiley, a former member of the House and a Guilford County lawyer, was elected Superintendent of Schools on December 13, 1852, and remained there until 1866. Superintendent Wiley traveled extensively across the state advocating uniformity

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[64]Ibid., 126.

[65]Easterly and Williford, 70.

[66]Ibid.

within the educational system. Various meetings were held around the state to promote further interest in the system. Meetings of interest were held in Greensboro, Salisbury, Warrenton, Statesville, New Bern, and Wilmington to advocate more and better teachers, uniformity of textbooks, school libraries, involvement of parents, school visitation, and unity of the common schools with the academies, colleges, and universities. The State Educational Association was formed in Salisbury in 1856. In 1858, the county and district associations were outlined and formed.[67]

Although efforts of Wiley did a great deal to enhance North Carolina's educational system, it continued to be plagued by many problems. Many people were indifferent toward education or were resentful toward taxes for schools. Facilities were poor and buildings were inadequately furnished. Teachers were often unfit for the work. Teacher salaries were low. The school term lasted less than four months. Curriculum included only reading, writing, arithmetic, grammar, and geography. Pupils of all ages studied and recited in the same room under the same teacher.[68] The Bible continued to be a mainstay as a textbook within the classroom and at home. Overcrowding was sometimes a problem which presented a greater disadvantage to

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[67]Ibid.

[68]Ibid.

the younger pupils. By 1850 there were 2,657 common schools operating with over 100,000 pupils.[69]

In the spring of 1854, a concerned citizen in Yadkinville wrote Superintendent Wiley a letter detailing his complete confidence in Wiley's diagnosis of the educational needs of the people of the county and state but indicating the lack of competent teachers. A member of the committee of examination of teachers in Yadkin County had told him that it had been difficult to supply some districts with any kind of teacher at all. He then set forth a plan to establish at Yadkinville a "normal school of higher grade" from which the classics, "the great stumbling block in the way of those seeking a practical education," should be forever excluded. It would be a school which devoted its energies to instructing teachers in the practical and useful branches of knowledge. The grand object was to instruct future teachers in both subject matter and methods of teaching, and would make school desirable for young farmers, mechanics, and tradesmen of surrounding counties.[70] The record fails to indicate that Wiley ever responded to the letter.

Superintendent Wiley lobbied heavily for stronger legislation to strengthen the office of the County Chairman of Superintendents. In 1857, the General Assembly passed new

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[69]Easterly and Williford, 63.

[70]Noble, 217.

legislation that authorized one chairman to act through the local sheriff to call meetings of all district committeemen in order to brief them on all communications received from the State Superintendent. The chairman would explain the system and policies of common schools and the duties of the committeemen as well as needs of the schools in that county. This process created better communication between the counties and the state office. Superintendent Wiley implemented several innovative procedures that continue to be used by superintendents across North Carolina school districts today.

## The Reconstruction Era

During the Civil War, most colleges and academies closed throughout North Carolina. The system of academies continued to operate but only in skeletal form. Superintendent Wiley resisted a movement by the Southern traditionalists to use the Literary Fund for war purposes. The University of North Carolina remained open even though its enrollment and activities suffered great decline.[71]

In the aftermath of war, a presidential plan of reconstruction began in North Carolina. In May, 1865, President Andrew Johnson appointed W. W. Holden provisional governor of the state. Several colleges reopened in 1866. Many academies resumed operations, but some had to close down

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[71]Easterly and Williford, 100.

again due to poverty. Basically, the state system of common schools collapsed early during Reconstruction for several reasons. The loss of most of the Literary Fund occurred due to the repudiation of state war debts and sale of the Fund's bank and railroad stock at depreciated prices.[72] From 1865 to 1868, the Conservatives refused to appropriate funds to schools and gave towns and counties responsibility for public education. Most local governments failed to fund schools due to poverty, public apathy, and public aversion to taxes.[73]

The Legislature immediately following the Civil War made many changes which affected the state's educational system. In May, 1866, a law was enacted which allowed for justices of the county courts to levy taxes at their discretion for common school support. The Legislature of 1866-67, composed largely of Whigs, passed two important educational acts:

> 1) The first act authorizing town and cities to establish public school systems to be supported by the taxes collected or authorized to be collected for corporation purposes. Provisions were made for local trustees, a local board of education, and other features of a modern school system.
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> 2) The second act authorized the county courts to appoint a county superintendent of schools in an effort to protect certain interests of the common schools.[74]

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[72]Ibid.

[73]Ibid.

[74]Ibid.

This appears to be the first actual mentioning of the concept of a local board of education.

New amendments were added to the State Constitution in April, 1868.[75] Counties were divided into "convenient districts" for the maintenance of more public schools, and the "county commissioners who failed to comply with this requirement were liable to indictment."[76] The newly established State Board of Education consisted of the Governor, Lieutenant Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Works, Superintendent of Public Instruction, and the Attorney General.

The Constitution of 1868 also set up the Superintendent of Public Instruction as an elective office.[77] The law required the legislature to provide a general and uniform system of free public schools for all children between the ages of six and twenty-one. The board of education was given the power to make rules for the school system and manage the educational funds. The schools would be financed by remains of the Literary Fund, proceeds from the sale of swamp lands and escheat and from fines and penalties, legislative

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[75]Ibid.

[76]Ibid.

[77]Ibid.

appropriations, and proceeds from state and county poll taxes.[78]

In July, 1868, North Carolina was formally readmitted to the Union under the new constitution which had been framed in a convention where the most vocal proponents were northern carpetbaggers and blacks. It did not mention the issue of race or color, and maintained that the mixing of the races in schools could be regulated by the State Board of Education and county authorities.[79]

That same year, the Senate issued a message to the House as printed in the public laws stating:

> Resolved, that the Board of Education be and is hereby instructed to prepare and report to this Legislature, on or before the 15th day of November next, a plan and code of laws for the organization and maintenance of the system of Public Free Schools contemplated by the constitution of the state. Ratified the 28th day of July, A.D. 1868.[80]

The Public School Law of 1869 provided for separate schools for black and white. It required a four-month school term for all children, and provided for a levy, if necessary, by county commissioners of township tax to finance a four-month school term. The Legislature of 1869 also appropriated $100,000 for schools. However, a viable school system was

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[78]Ibid.

[79]Noble, 299.

[80]Ibid., 313.

not established for several reasons. There was a lack of public confidence in school officials. The state's resources were limited, and legislative appropriations for schools were severely cut after 1869. Even the appropriations of 1869 were not immediately available. School buildings were old and run-down. Many townships failed to provide schools with funds in accordance with the laws. There were about 1,400 schools operating at a cost of $45,000 with 50,000 pupils or about a sixth of the total number of school-aged children in 1870.[81]

Local township committees were to "establish and maintain, for at least four months in every year, a sufficient number of schools at convenient localities, which shall be for the education of all children between the ages of six and twenty-one years residing therein."[82] A county examiner was appointed by the county commissioners to examine teachers, issue certificates, enforce prescribed courses of study, and rules and regulations governing the schools. The State Board of Education assumed more duties, including textbook adoption, and establishing courses of study, among other things.

On April 16, 1869, a new school law was ratified with new political subdivision called for in the Constitution. This was done by using the township district plan with several schools in a township instead of the old district plan:

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[81]Easterly and Williford, 101.

[82]Knight, 245.

> Section 6:
> In every township there shall be biannually elected a School Committee, consisting of three persons, whose duty shall be prescribed by law.[83]

Then as today, the main question focused upon taxation. Questions on tax levying were almost unanimously rejected. Questions soon arose as to whether or not county commissioners could levy taxes if the questions had been voted down by the people.

Craven County offered the first test in 1870. A tax levy had been voted down by the people, but the commissioners proceeded with a tax levy in order to maintain the schools. A complaint was filed which stated that the commissioners had violated the new constitution. A temporary injunction was filed by the local district judge to prevent the tax levy. The defendants claimed that the tax was levied for "necessary expenses" for the upkeep of the schools. On November 12, 1870, the injunction was dissolved. Later, the case was appealed to the U. S. Supreme Court where a decision was filed against the commissioners. The two main points that were brought out in the Supreme Court's ruling were (1) that the tax was not necessary for expenses within the meaning of the state constitution, and (2) that the equation of taxation had not been observed. The defective legislation was corrected in order to eliminate the previous errors since county

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[83]Noble, 314.

commissioners were held responsible for maintaining schools in every township.[84]

The New School Law of 1871 allowed more liberal provisions for school support and provided for a plan by which institutions for teacher training could be created. Renewed emphasis on teacher evaluation led to the Lexington Normal School, which was organized by the Davidson County Board of Education under a special act of Legislature. The school had annual sessions of twenty-five days, and gave instruction to teachers of both races. The doctrine of universal education, free and open to all classes, became the genuinely accepted plan. Practically all counties adopted a plan of levying and collecting taxes to supplement the annual appropriations by the state.

A new school law that was enacted on February 12, 1872 empowered the county board of commissioners to function as the county board of education. The chairman of the county commissioners was technically the chairman of the board of education. The register of deeds became the clerk to the board of education, and the county treasurer became the treasurer of the county free school fund. The board of education was given control and supervision of school affairs such as appointment of examiners, determining boundaries of the districts, and enforcement of the provision of school law.

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[84]Lane et al. v. Commissioners of Craven County, 65 N.C. 153 at 246.

The board was originally set up to meet on the second Monday in February and September of each year and at other times subject of the public schools."[85] Boards of education would later emerge as separate operating entities, but the strong influence of county commissioners upon the educational environment continues today.

## A New Era Begins

During the early part of the 1870s the new school committees assumed greater responsibilities over more territory than the old school districts had encompassed. There were more duties to perform in the care and management of schools. There continued to be mistrust on the part of the voting public due to the lack of confidence in school officials. The Superintendent of Public Schools at that time was S. S. Ashley, a carpetbagger and advocate of racially mixed schools. His assistant, J. W. Hood, was a black carpetbagger from the North.[86] School districts were forced to report data on both black and white students. The local educational interests of both black and white students were addressed, but done so in separate segregated schools.

The new system often resulted in the election of black school committeemen with whom white men were unwilling to

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[85]Noble, 362.

[86]Easterly and Williford, 101.

serve. The county school examiner in Richmond County wrote that there was . . .

> an unaccountable indifference--a reluctance even on the part of men who are qualified to accept positions on a school committee, especially if there is a prospect that they might have to resort to the disagreeable expedient of condemning a lot of land for a school site. At the township election a year ago, a committeeman was chosen consisting of two white men and one colored man. The whites neglected to qualify and would not serve. After several months, another white man, signifying his willingness to serve, was appointed to fill one of the vacancies and was qualified. In a few months, for some unaccountable reason, he resigned, again leaving the colored men alone. . . . I accordingly nominated two white men, one of whom was a member of the Constitutional Convention, also a member of the General Assembly for the last two years. . . . But after two or three weeks of consideration, both of these men backed down and declined to qualify. Consequently, at the last meeting of the county Commissioners on the twenty-first instance, I tried two others who came up like men, qualified, and entered upon their duties, and I believe they will work.[87]

The educational system began to advance in many ways. The school attendance began to rise, as did popular interest when school management was improved. Private academies were slowly revived, expanded, and used to ease part of the burden for secondary education of students. Some city graded public schools were established. One example was the Greensboro Graded Schools founded under Section 74, in the Charter of Greensboro, on March 28, 1870. It stated that:

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[87]R. T. Long. in Noble, 322.

> The corporate limits of the city of Greensboro shall constitute a school district, and that all the taxes levied upon the citizens of the state for school purposes, shall be expanded in conformity with the regulations of the State, in establishing graded schools. Within the city, and should the amounts thus realized not be sufficient to keep the schools open eight months in the year, in that event the commissioners shall appropriate a sufficient amount of money from any funds belonging to the city to supply the deficiency.[88]

The "taxation equation" became a question mark as it dealt with the polls and property as required by the Constitution of that time. The state tax for public schools rose from 6 2/3 cents on each $100 valuation of property and 20 cents on each poll in 1871 to 15 cents for property and 45 cents for polls in 1891. Still, funding remained inadequate.[89] There was a devotion of the South to a sort of "laissez-faire" theory in education, and frequent as well as extreme applications of the principle of local government in educational administration.[90] The signs of awakening began to show in North Carolina when the return of "home rule" was made.

Adequate provisions were made toward the education of teachers with the advent of the normal schools, and later on teacher institutes. A normal school for black teachers was established in Fayetteville in September, 1877, with an

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[88]Noble, 400.

[89]Easterly and Williford, 101.

[90]Noble, 294.

enrollment of 40 students.[91] At a meeting of the State Teachers Association in July, 1880, a resolution was adopted, including a memorial that was forwarded to the Legislature asking for authorization of county boards of education to appropriate money for county institutes for training teachers; to require local school officials to erect a suitable house in each school district; to buy better books; and to hire better examiners. In a response to these requests, the state superintendent recommended that county superintendents take the place of examiners and authorize the appointment of district school committees by county boards of education.[92]

By 1877, the North Carolina Legislature had gradually worked around to a position of requiring by law that county commissioners could levy special school taxes. In the early 1800s, ten public schools cost around $155,000 to operate, and enrolled about 20 percent of the state's children for a few weeks.

The 1881 Legislature approved the official position of county superintendent to be elected by a joint meeting of the county boards of education and the county magistrates for a two-year term. Many changes were eventually made on this law after its original enactment. By 1883, the duties of the office had been restricted with its duties as well as the

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[91]Ibid., 296.

[92]Ibid.

local board of education's having been transferred back to the county commissioners. Again, the conflict and questions of "who's in charge" became a major issue at the local level of government. This conflict and struggle for power continues today. By 1897, provision had been made for the county boards of education and a county supervisor of schools to take back the control of school operations. The Legislature of 1899 would later provide for the election of a county superintendent to administer the schools.[93]

Regular "ad-valorem" taxes showed very slight increases during the late 1800s. In 1885, the case of Barksdale et al. v. Commissioners of Sampson County,[94] occurred as a result of the commissioners' levying a special tax for supporting four months of school. In October, 1885, the case was enjoined and judgement was made in favor of the plaintiffs. The case was appealed by the county commissioners based on the findings of the district court judge. The Supreme Court affirmed the decision of the lower court, and held that the act of 1885 was unconstitutional and did not come within the provisions of the Constitution which authorized a special tax for a special purpose with the approval of the General Assembly.[95]

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[93]Laws of 1895, Chap. 439, in Knight, 320.

[94]Barksdale et al. v. Commissioners of Sampson County, 93 N. C. 422.

[95]Knight, 317.

The Local Assessment Act was formed to go further with taxation than the cities and towns in keeping the school taxes separated on the racial basis. It enabled the voters in either a white or black district, whether coterminous with, or overlapping, a district of the other race, to vote separately on the question of levying a special school tax on the property and polls in a white district or in a black district.[96] The act was declared unconstitutional by the Supreme Court in the case of J. C. Pruitt, Eli Pasour, and Others v. Commissioners of Gaston County[97] on grounds that it discriminated against the Black children in a district. The case of Rigsby v. The Town of Durham[98] resulted in the same decision. Both decisions annulled the legislation of 1881 and 1883 that had enabled Goldsboro, Statesville, New Bern, Monroe, Fayetteville, Wilson, Edenton, Guilford County, Tarboro, Lenior, Maxton, Lumberton, Rocky Mount, Battleboro, Washington, and Magnolia, or any school district, white or black, to establish graded schools by levying a special tax for their support and to divide the proceeds of the levy on the race basis.

The schools of the late 1800s were built upon the following four foundations: 1) curriculum; 2) complete

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[96]Noble, 408.

[97]93 N. C. at 513.

[98]93 N. C. at 254.

organization with which to reach the objectives; 3) efficient administrative officers; and 4) sufficient funds to finance the system. The three main forces which countermanded those four concepts were the poverty of the North Carolina people, the education inefficiency of the Reconstruction times, and the natural and powerful force of racial prejudice.[99]

Separate boards of education were created in 1885 within the local school districts. These boards operated separately from the county commissioners. This increased the efficiency in the operation of school matters. The new board, concerned with educational affairs only, was able to devote its entire time to the special work of school administration. The board members were

> elected by the justices of the peace and county commissioners at their next regular joint sessions, and was to consist of three residents of the county, who shall be qualified by education and experience to specially further the public school interests of their county.[100]

By 1900, the cost of providing a school term of about 70 days was near $950,000, with a student enrollment of around 58 percent. The state school system was still experiencing difficulties, having failed dismally to institute educational requirements of its own constitution and laws. Reasons for the state's educational backwardness were poverty due to war

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[99]Noble, 396.

[100]Ibid.

and low incomes, scattered populations, bad roads, large school population relative to the number of taxpaying citizens, and maintenance of a dual, segregated system. Other basic reasons were the colossal public indifference toward education by the general public, and reactionary political leadership where governors and legislatures failed to press for improved education.[101]

Outside forces also had a large impact upon the state's educational system. For example, the Freedman's Bureau established over 400 schools during its existence. The George Peabody Fund granted money to some schools during the 1800s.[102]

Despite the state's educational backwardness, however, some leaders continued to agitate for improved schools. Their efforts helped to convince the populace of the necessity for educational reforms throughout the state. Charles B. Aycock was elected governor and inaugurated in January, 1901. An educational revival took place within North Carolina through the efforts of Aycock and others such as Dr. Charles D. McIver, a member of the Southern Education Board. In the Summer of 1902, several rallies were held on behalf of education around the state. Among those participating were McIver, Aycock, James Y. Joyner, the State Superintendent of

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[101]Easterly and Williford, 102.

[102]Ibid.

Public Instruction, and Eugene C. Brooks of the Monroe City Schools.

In 1905, the State Association of County Superintendents was organized. Names such as Murphy, Wiley, McIver, and Aycock became commonplace in educational parlance. Even a new motto was introduced which was based on Aycock's theory of education--"Educate everybody and everything."[103] With this theory in mind, the State Board of Education began lending money to the local boards of education. This philosophy remained a focal point in the actions by both state and local school boards for the next several years until the early 1940s. At this point the state's educational practices began to be strongly affected by landmark Supreme Court decisions.

The twentieth century marked a time of increased government expenditures for the operation of public schools. Teachers' salaries were increased in an effort to compensate them more adequately for their work. The value of school property rose in most areas. Volumes of literature in the public school libraries grew from 1.5 million to 5 million copies.[104]

There was rapid progress in the 1950s and 60s. Public school property, in terms of buildings, capital investments, and equipment increased in value from $480 million in 1955 to

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[103]Knight, 342.

[104]Easterly and Williford, 146.

$1.2 billion in 1969-70. In 1971-72, the state had 2,054 public schools, of which 1,546 were elementary and 508 were high schools. The number of pupils enrolled in the schools totaled about 1.2 million. The number of teachers within the schools was around 52,000. The average annually salary for teachers during that time was $8,604. Average daily attendance was 1.1 million pupils. North Carolina developed one of the best school bus systems in the nation. The expense of public schools amounted to $725 million, of which about two thirds came from state funds and the remainder from local and federal. Per pupil expenditure were about $663 as compared to about $4,600 today. The three major sources of state public school funds were 1) income taxes (45 percent), 2) sales tax (30 percent), and 3) franchise taxes (6 percent). About 88 percent of local funds for the schools came from property taxes.[105]

Local school board decision making has been greatly influenced over the years by many state and federal court cases. Some of these cases will be examined further within this study, especially those between 1940 and 1992. However, future decision making may be influenced to some extent by the advent of mandatory training for school board members. This concept will be examined in the following section.

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[105]Ibid.

## Mandatory Training for School Board Members

The issue of mandatory training for school board members is not new. School board associations across the United States continue to lobby their local legislators for mandates regarding training for local school board members within their respective states.

Today's school board members, unlike those of the past, are now required to have training. This training is designed to assist local boards with the age-old task that all school boards have faced at some point in time policy formulation and implementation.

The formulation of policy is basically pragmatic in nature, involving a sequence of events (or a set of processes) associated with the formulation of such policy. Among the earliest of these formulations was that of Harold Laswell, who identified seven functional activities that he postulated constitute the decision process: intelligence and planning, prescription, recommendation, innovation, application, appraisal, and termination.[106] Models that postulate public policy determination as governed by a more-or-less rational, sequential process have been widely criticized, however, on theoretical and empirical grounds. The sequential way of looking at policy making, according to Lindblom, "fails to

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[106]Harold D. Lasswell, "The Public Interest," in The Public Interest, ed. by Carl J. Friedrich (Nomos, Vol. 5) (New York: Atherton Press, 1962).

evoke or suggest the distinctive political aspect of policy making, its apparent disorder, and the consequent strikingly different ways in which policies emerge."[107] It suggests a minimization of conflict among participants of the process, an orderliness and clarity that does not exist. This view of policy making does not provide an adequate basis for explaining why some particular policies emerge while others do not. Within the general spirit of process-oriented inquiry, increasing scholarly attention should be devoted to the early stage of the policy-making process termed "agenda formation."[108]

Kingdon views the emergence of issues onto the public policy agenda as the result of the serendipitous convergence of three separately identifiable and independent streams of input: problems, policies (or solutions), and politics.[109] In Kingdon's model, governmental action is most likely when the independent streams of problems, policies, and politics come together and reinforce each other, among actors inside and outside of government. Kingdom found that appointed executives are of unquestioned significance in shaping the public policy agenda. Lynn said, "One finding of my study is

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[107]Charles E. Lindblom, The Policymaking Process, 4.

[108]Lawrence E. Lynn, Jr, Managing Public Policy (Boston: Little, Brown and Company, 1987), 57.

[109]John W. Kingdon, Agendas, Alternatives, and Public Policies (Boston: Little, Brown, 1984), 3.

that if I were to identify actors in the system that have this unusual ability to influence policy agendas, they would not be career bureaucrats or lobbyists but rather elected officials and their appointees."[110]

The reality of school board service is that there is great pressure to adapt to institutionalized roles, belief systems, and political values, and thus to become mere agents of particular organizations or constituencies. The opportunities for seeking even restricted change in policy are sometimes uncertain and ambiguous. In the same vein, officials who understand the origins and nature of the pressures of conformity originating in their organizations and environments will be able to counter these pressures to an extent sufficient to permit them to exert influence over the character of organizational activity.[111]

Being a school board member has never been a simple task. The duties of the position today are no different from what they were a hundred years ago. Decisions still have to be made that sometimes are not popular or easy to make. Whether dealing with property, personnel, or policy, the issues are endless and the problems never cease to be perplexing. Nevertheless, the challenges and opportunities of board

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[110]Ibid.

[111]Lynn, 269.

service will ultimately determine the educational progress of the future.

Board service is a time-consuming activity. Regular board meetings, special meetings, committee meetings, and public access require many hours of service. The time given by board members must come from the time that could be spent with family, friends, work, or in other leisure activities. Some board members spend a great amount of time keeping themselves informed; others do not. Unlike the boards of yesteryear when transportation and communication were not as advanced, most school boards have found that member training becomes an important component of board service.

In the decades to come, educational leaders can expect their schools and school systems to become increasingly turbulent, less programmable, and more heterogeneous in relation to local cultures and value systems. Given the mounting complexity of school organization and related confusion over role expectations, school districts are preoccupied with questions regarding effective leadership. Confusion exists over the relationship between community, state, and federal expectations of the school district and its own internal needs and goals. Universities, research and development centers, professional organizations, and private foundations and consulting firms are beginning to respond to the current needs of school board leadership by offering many variations of training programs.

American education has been unique in the world because of its system of local education control, featuring either elected or appointed lay persons serving in the key role of school board member. The role usually attracts people with good reputations or community members whose sense of civic responsibility is high and whose ambitions are primarily service-oriented. Many are leaders of one sort or another, but few have ever had training that is especially relevant to the complex, demanding leadership roles they occupy as a school board.

Through the years there have been many requests and possible needs for clarifying the role and responsibilities of the board member. Communication skills, problem solving, planning, decision making and school law are all possible areas for school board training. There are obviously other needs involved in the training of school board members, but it should be up to each individual to recognize inherent weaknesses and correct these accordingly.

The qualities which make for good school board members are similar to those which make for success in any major enterprise. Important among such qualities are intelligence, social conscience, organizational ability, and an understanding of how boards can function most effectively. Successful school board membership is concerned with one single goal--the maintenance and improvement of the local school system. School board members, in addition to these

qualities, need to be able to see the big picture of the meaning of education for all individuals and for a democratic society. The school board member should be one who sees this mission clearly. Finally, the individual should not have "axes to grind" for selfish interests. The primary ambition should be dedication to an improved program of education for the children of the community served.

John Gardner, in a speech to the National Committee for Support of Public Schools, said:

> Most school boards in this county are inadequately organized to do their job. I have known hundreds of able and experienced men and women who suffered years of service on a badly organized board, but only two or three tried to reduce the frustrations through a reorganization of the board or proper training for school board members.[112]

In-service training for school board members was examined in a study by Curtis.[113] He found that there was agreement among superintendents and board members on preferred inservice training topics. New board members did not rate the need for inservice training on board responsibilities as high as all other groups. All board members rated the need for training in curriculum significantly higher than did superintendents.

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[112]John Gardner, "Qualities of the Good Board Member," in The Effective School Board Member (Trenton, N.J.: Federation Press, 1966), 45.

[113]Steve E. Curtis, "School Board Inservice Training: Perceptions of Public School Superintendents and School Board Members in North Carolina" (Ed.D. diss., University of North Carolina at Chapel Hill, 1990), 130.

in curriculum significantly higher than did superintendents. Board members having served more than one year indicated a greater need for inservice training in finance than did superintendents. Even though no significant differences existed between superintendents and any board member groups in the areas of personnel and current issues, all board member groups indicated a greater need for inservice training in those areas than did superintendents. The respondents of the survey expected superintendents to be the primary provider for the in-service training. As board members' tenure increased, they expected less of the superintendent for in-service training.

The North Carolina School Board Association has established a formalized system of training for board members under the NCSBA Academy for School Boardsmanship. The Academy consists of various levels of awards that board members can receive by attending training seminars, special information workshops, and district, state and national conferences. Numerous information items are included within all of these sessions. All are designed to provide board members with up-to-date educational information designed to enhance overall board performance. Items range from new board member seminars to a Public Education Day, which is held in Raleigh on certain years, in order for board members to meet with their state legislators and contemporaries to discuss critical educational issues.

In 1991, the North Carolina legislature enacted a new statute which outlines general requirements for mandatory training of school board members. G.S. Section 115C-50 states:

> All members of local boards of education shall receive a minimum of twelve clock hours of training annually. The training shall include but not be limited to public school law, public school finance, and duties and responsibilities of local boards of education. The training may be provided by the North Carolina School Boards Association, the Institute of Government, or other qualified sources at the choice of the local board of education.[114]

The enactment of this legislation has allowed North Carolina to join the fast-growing list of other states that have initiated similar mandates. The trend of mandatory school board training will most certainly continue by virtue of the complex problems that board members will have to address in the future.

Mandatory training for school board members is a national trend and a valid concept. However, a reliable methodology to ensure total participation will need to be developed to ensure success of the concept. Time may be the biggest factor in getting all board members to participate in the various training programs. Some of the twelve clock-hour training sessions could be held at the local level by central office

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[114]Public School Laws of North Carolina, G.S. Section 115C-50 (Chapel Hill: Institute of Government, 1992).

staff. North Carolina School Board officials could conduct sessions at actual board meetings to promote board member training. Greater utilization of local resources is a viable way to meet these training needs.

Other issues will also have an overall effect upon mandatory training for board members in North Carolina:

1. The establishment of desired outcomes that are compatible or desirable for all local school boards.
2. Types and/or categories of penalties that will be imposed in the enforcement of the new mandates.
3. Lack of total participation by every school board member across North Carolina.
4. Funding for the expansion of existing programs as well as the research and development of new training programs for board members.
5. An increase in the amount of paperwork and record-keeping which will be required by every school board member who participates in the mandatory training.
6. A greater dependency upon superintendents by board members for local training, and mutual trust-building between the board and the superintendent.

These are only a few of the issues which should be considered when mandatory training for school board members is discussed.

Moreover, all of them could be important in the development of practical decision-making strategies.

Decisions that are made by school board members all across the nation will determine what happens in hundreds of thousands of classrooms in our public schools. The children in these classrooms will become the leaders of the twenty-first century. School board members have an awesome challenge. They are entrusted by their fellow citizens with the responsibilities of decison making for the institution of free public education. Thomas Jefferson wrote:

> If a nation expects to be ignorant and free in a state of civilization, it expects what never was and never will be. The functions of every government have propensities to commend at will the liberty and property of their constituents. There is no safe deposit for these but with the people themselves; nor can they be safe with them without information.[115]

All school board members should seek out and utilize the knowledge which will improve their overall decisionmaking capabilities. In doing so, board policies and practices will become less susceptible to litigation.

School board members are trustees, responsible for a trust established within the community they serve, and to the administration which serves the board. However, board members, although usually elected and sometimes appointed, owe

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[115]U.S. Office of Education, Expressions on Education by Builders of American Democracy: (Washington, D.C.: Government Printing Office, Bulletin 1940, No. 10, 1941).

a primary responsibility to the children of their community. This concept of representation is fundamentally different from one that applies to a state legislator or city council member. School board members not only must keep this distinction in mind themselves, but they must help the citizens of their community come to understand it as well.

In order to meet their responsibilities to public education, to children, and to the community, school boards must be involved in a variety of areas. Policy making is one of these areas.

Policies are general rules about what will be done, who will do it, and how it will be done. Much is implied in this deceptively simple definition, especially that which is not defined as policy. Specifically, policy is not administration, and boards generally do not become involved in the day-to-day administration of their districts.

Boards should not blur the line between policy and administration because the result will be poor or ineffective administration within the local unit. Administrators are paid substantial salaries to perform their duties. The general public will always be tempted to bypass established lines of authority and go directly to board members with their concerns if administrators are not allowed to do their job.

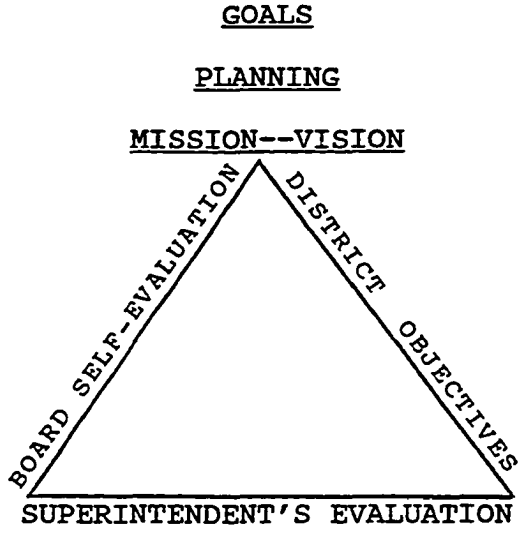
The school administration is responsible for implementing a board's established policy, because a policy does not work until it is implemented, and because a board needs to be kept

informed of the need for new or revised policies, and because effective administration becomes critical to any school board's efforts to meet its own responsibilities.

School boards are perhaps one of the best examples of representative and participatory government with its members being elected or appointed by the community, serving at the public's pleasure, and making decisions based on community needs, values, and expectations. The public usually has great expectations for school board members, and these expectations exact a price beyond civic duty. Local boards must plan, develop, assess, and implement by policy to see that curricular opportunities are set in place, are of the highest possible quality, and are equitable. Policies should always be in place to insure due process. Boards must conduct their business in open meetings, with exceptions only in accordance with varying state laws or standards. Board members come under the jurisdiction of state codes with legal limitations and with limited flexibility in allocating funds budgeted by other units of government. Individual board members are subject to all the laws governing other elected officials and in many states must file ethics statements (See Board Member Code of Ethics in Appendix D).

It is too early to talk collectively and from afar about the need for excellence in education. It is the local board member who is ultimately responsible and accountable for getting the job done. Citizens serving on local school boards

are the individuals who determine needs, missions and goals of the public schools. A delicate balance must be achieved among the goals, planning, and mission or vision of a local board of education as opposed to the board's own self-evaluation for effectiveness, the district's objectives for the board, and the superintendent's evaluation:




A bonded unit must be formed by team building of all the characters within the educational setting, including local county commissioners and/or city council members. An element of trust must be a key factor within this setting. Long and short-range goals must be established with reachable objectives being a practicality, not a formality. The relationship between the board, superintendent, and the local district must be nurtured through a valid process of identifying the strengths and weaknesses of each faction.

Finally, securing adequate district and state financing must be made a priority in order for local educational units to reach educational success. A delicate balance exists among all of these entities.

Strategic management of public policy requires participation in the processes of policy design, the deliberate use of policy analysis and a policy-planning process, the goal of which is identification of issues, alternatives, evidence, and arguments that facilitate contribution to policy debates that are consistent with planned strategy.[116] School boards as well as executives, bureaucrats, a variety of private or nongovernmental groups and individuals should all become a part of the implementation of domestic policies in fulfilling the mission of education. According to Pressman and Wildavsky:

> Implementation may be viewed as a process of 'interaction' between the setting of goals and the actions geared to achieving them. Program implementation thus becomes a seamless web. Implementation, then, is the ability to forge links in the casual chain connecting actions to objectives.[117]

Policy making is understood primarily in terms of the making of choices about what is to be achieved and how. Thus,

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[116]Lynn, 170.

[117]Jeffrey L. Pressman and Aaron Wildavsky, Implementation, 2nd ed. (Berkeley: University of California Press, 1979), 21.

the study of policy making is the study of the organizational, informational, and political conditions under which choices are made. Implementation is studied in terms of how well or how poorly these choices are translated into organization changes.[118]

The board of education is a local education entity empowered by Chapter 115C of the N. C. General Statutes with the responsibility to oversee and control all activities related to the public schools. The board receives local, state, and federal government funding and must adhere to the legal requirements of each funding source. The board is not included in the reporting entity of any other governmental unit in accordance with North Carolina General Accounting Statement 3 since the board's members are elected by the public, have authority to designate management, to significantly influence operations, and are primarily accountable for fiscal matters.

The accounts of the board are organized on the basis of funds and account groups, each of which is considered a separate accounting entity. The operations of each fund are accounted for liabilities, fund equity, revenues and expenditures or expenses as appropriate. Governmental resources are allocated to and accounted for in individual

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[118]Robert Nakamura, "Textbook Policy Process and Implementation Research," Policy Studies Review (Autumn, 1987): 143.

funds based upon the purposes for which they are to be spent and the means by which spending activities are controlled.

The board is required by the N. C. School Budget and Fiscal Control Act (G.S. 115C, Article 3) to adopt an annual balanced budget resolution for all funds except the special funds of the individual schools. The Budget and Fiscal Control Act also prescribes dates by which certain steps of the budget procedures are to be performed. The annual budget is prepared on the modified accrual basis as required by G.S. 115C-440(b). Budgetary control is exercised in all funds except the special funds of the individual schools and appropriations are made at the departmental level and amended as necessary by the board.

Many school boards have found success by inviting everyone to participate in the decision-making process. A study by Gross revealed the following:

1. Participation leads to higher staff morale, and high staff morale is necessary for successful implementation of board policy;

2. Participation leads to greater commitment, and a high degree of commitment is required for effecting change;

3. Participation leads to greater clarity about innovation and clarity is necessary for implementation of policy;

4. Beginning with the postulate of basic resistance to change, the argument is that participation will reduce initial resistance and thereby facilitate successful implementation; and

5. Subordinates will tend to resist any innovation that they are expected to implement if it is initiated solely by their subordinates.[119]

However, the concept of central coordination and control[120] should remain in effect to insure that organizational practices are completed in a timely and efficient manner. O'Toole and Montjoy found that:

> In the absence of formal authority, there is likely to be very little coordinated effort without the provision of resources, unless the new policy happens to match closely the goals and/or world view of the units in question.[121]

**Summary**

A review of the historical literature indicates that the concept of a governing board to monitor educational practices began early and ran parallel with the state's progressive development. The governing board began as an appointive position, but later became elective in the majority of

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[119]N. Gross, J. V. Giaquinta, and M. Berstein, "Implementing Organizational Innovations" (New York: Basic Books) in Van Horn and Van Meter, "Policy Implementation: A Conceptual Framework," Administration and Society, (1975): 475.

[120]Graham Allison, Essence of Decision (Little, Brown and Company, 1971), 256.

[121]Lawrence O'Toole and Robert Montjoy, "Interorganizational Policy Implementation: A Theoretical Perspective," Par 44 (1984): 492.

districts. This particular trend was found to be common in most of the southern colonies and states.[122]

Intellectual as well as educational growth was very slow and deliberate under the rule of Lords Proprietors during the Colonial period. Religious and political influences caused the settlement of the Albemarle Sound region of the state. Many of the new settlers migrated from Virginia or Pennsylvania. Most of the settlements occurred between 1663 and 1765.

The first teachers were lay leaders in the local churches. There was strong Episcopalian and Protestant influence upon the education processes during that time. In the years that followed, the Moravians and Quakers also had a strong impact upon the education of children. The passage of the Voting Act in 1777 was aimed at educating the "poor and orphaned" of the colony so as to make them productive citizens.

The establishment of a constitutional provision for schools throughout the colonies was the first major step toward a unified educational system in North Carolina. This act would later be revised in 1835 under a new constitutional amendment. The development of the idea of public education was slow, although it began early and grew steadily. As the

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[122]John G. Richardson, Settlement Patterns and the Governing Structures of the 19th Century School Systems (Bellingham, Wash.: Western Washington University Press, 1982), 10.

state prospered, a "Literary Fund" was established to help fund the schools. The first public school law was passed in January 1839. However, the lack of communication between the eastern and western counties produced sectional jealousies which unhappily prevented the development of a common educational interest[123]

During the nineteenth century it was commonplace to cite the educational backwardness of public education in the South. Explanations for the slowness of development tended to place major responsibility on cultural resistance stemming from Civil War and Reconstruction.[124] To be sure, these events were instrumental in retarding the growth of schooling.[125]

A new state constitution went into effect after the Reconstruction period in the "New South." Section 4, Article 9 of the provision revived the old Literary Funding process. From 1870 to 1903, the principal sources of increase for funding were proceeds from sales of federal land grants not already appropriated by the United States, and proceeds of sales of swamp lands, grants, gifts, and other divestitures made to the state.

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[123]Ibid., 102.

[124]Wyckliffe Rose, The Educational Movement on the South (Washington: Government Printing Office, 1905), 359.

[125]Edgar W. Knight, "Some Fallacies Concerning the History of Public Education in the South," South Atlantic Quarterly 12 (1914): 371.

Taxation and governance have remained two key issues that have affected education in North Carolina through the years. The decision rendered in Lane et. al. v. Commissioners of Craven County, Rigsby v. Town of Durham, and Pruitt, Pasour v. Commissioners of Gaston County all played important parts in the formation of school board policy based upon taxation of districts versus educational expenditures.

The conditions of population dispersion permitted most areas of the state to divide into districts for purposes of local government. These districts, for magisterial, electoral, or educational functions, differed from each other in many ways, especially in similar governance patterns. The county court or board of commissioners became the dominant body which held the authority to influence the essential activities of the districts.[126] This aspect continues to remain in effect throughout most of North Carolina's school districts.

Previous actions taken by local school boards over the years reveal many similarities to board operations of today. Although state and federal laws prescribe general operating guidelines to be followed, state legislative mandates seem to have allowed more flexibility and autonomy at the local level. Local boards of education must use this autonomy wisely and efficiently in the formulation and implementation of school

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[126]Richardson, 17.

board policy. A thorough review of North Carolina's educational development could possibly give local board members a better understanding of why the system operates as it does. Therefore, it is correlated that an increase in knowledge about system operations will increase the efficiency of overall board operations.

School board members are trustees, responsible for a trust that should be established between the community and the superintendent. However, the trust can be easily broken if board members allow concerned citizens to bypass established lines of authority when problems arise.

Mandatory school board training, as established by North Carolina General Statute 115C-50, should be utilized by local boards to enhance strategic management of their respective school districts. The development and implementation of effective policies should be an on-going objective for every local school board. The training may also help to enhance a board's knowledge about budgeting theory and practice. Budgeting is often an area that holds many procedural questions for discussion or debate.

Finally, many school boards have found success by creating an inviting atmosphere, by allowing everyone to participate in the decision-making process without giving up the formal control or authority. However, every board operates differently. What works best for some boards may not be the best standard of practice for all.

# CHAPTER III

# AN ANALYSIS OF LOCAL SCHOOL BOARDS IN NORTH CAROLINA

## Introduction

Local boards of education encounter many problems and dilemmas during the performance of their duties. Occasionally, these problems are compounded by legal action taken by special interest groups, disgruntled employees, or other factions. These problems can often be reduced or possibly eliminated through the use of critical thinking and logical discussion by board members. Metacognitive processes should constitute a board's ability to plan a strategy for producing information that is needed for problem solving. Metacognitive or higher order thinking strategies should be used as a self-monitoring technique and implemented by school boards in an effort to resolve dilemmas affecting board operation. Additionally, board composition and characteristics have a direct relationship upon the operations of its decisionmaking capability.

Gross, in his book, Who Runs Our Schools, indicated that while the school board should be the spokesman on education, many superintendents feel that school boards impede the process citing the following reasons:

1. board members using the position as a political patronage post;

2. board members functioning as individuals instead of as a unit;

3. school board members tending to vote as representatives of blocks; and

4. the differences of economic or educational levels of members of the board.[127]

In this chapter, the following issues are examined: 1) demographics--an analysis of the composition of school boards, especially the local boards within North Carolina; 2) school board effectiveness; 3) elected versus appointed boards of education; and 4) the effects of redistricting and the Federal Voting Rights Act upon local boards of education.

**Demographic Analysis of Local School Boards**

The demographic information about North Carolina's school boards indicates many differences in the way the local boards operate. Although all boards are governed by the General Statue of the State, these same boards have the autonomy to choose their own operating procedures and establish their own local policies. Therefore, it may
be said that the business of education is a local school board function but remains the state's responsibility. This responsibility may include many areas, but one of the most

[127]Neal Gross, Who Runs Our Schools? (New York: John Wiley and Sons, 1958), 12-16.

important is probably the funding of successful educational programs.

Goldhammer wrote in The School Board that a well-organized board of education has the following five major areas of responsibility:

1. Determination of major goals. The school board with advice from the professional staff and after careful study should determine the direction to be taken.

2. Formulation of operating policies. It is the responsibility of the school board to formulate board policies for the school district to follow. The school board should make a distinction between what is public policy and what is a concern to be resolved by the professional staff.

3. Selection of key personnel. The board is legally responsible for employment of all school personnel. The board's main responsibility is the election of a competent superintendent.

4. Acquisition and distribution of funds. The public is always concerned about the tax rate and how that revenue is utilized. It is the duty of the board member to inform the people how the money is being spent and the progress achieved.

5. Evaluation. A constant evaluation is necessary in order that the school board can determine the extent to which the educational goals are being achieved.[128]

Konnert and Furtwengler, in their article in the American School Board Journal, stated that the four primary duties of a school board were to set clear policies, to establish long-

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[128]Goldhammer, 101-103.

range (five to ten years) goals and update annually, to establish short-range (one to two years) priorities, and to evaluate the superintendent. They felt that the board should refrain from personnel evaluation other than of the superintendent. His evaluation should reflect how well he had administered the policies and achieved the objectives.[129]

The first major study of the social composition of school boards was completed by George S. Counts in 1927. His comprehensive study revealed that 42 percent of the school board members were in the 40-49 age bracket with 48 as the median age of a board member at that time.[130] Several other surveys have been conducted to gather information about school board membership through the years, most notably the National School Boards Association.

A 1985 survey conducted by Donald T. Alvey, Kenneth E. Underwood, and Jimmy C. Fortune was sponsored by The American School Board Journal and Virginia Tech, which collected data from 1,468 school board members across the nation. The results reported in January, 1986, included the following:

1. The number of female members decreased from 31.4 percent to 28 percent from the previous year.

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[129]William Konnert and Willis Fortwengler, "Take This Quick Quiz: Are You a Good Board Member?" American School Board Journal 167, No. 2 (1980): 34-40.

[130]George S. Counts, The Social Composition of Boards of Education (Chicago: University of Chicago, 1927, 38.

2. A majority of board members were white (93.5 percent).

3. The largest age group represented members 41-50 years of age.

4. Only 22.1 percent of the members had a family income of under $20,000.

5. Over 60 percent had children enrolled in the schools they served.

6. The five top issues of concern were lack of financial support, declining enrollment, collective bargaining, parents' lack of interest, and management/leadership.[131]

A study by Barbara J. Hansen indicated that all boards of education reflect the values of their communities and concerns.[132] Another researcher, Peter J. Cistone found in his study that school board members "tend to be white, middle-aged, male professionals, married with children in the schools, and active in the organizational and associational life of the community."[133] Further studies by Cistone indicated that few board members run for office on a whim;

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[131]Donald T. Alvery, Kenneth E. Underwood, and Jimmy C. Fortune, "Our Annual Look at Who You are and What's Got You Worried," American School Board Journal 173, No. 1 (1986): 23, 26-27.

[132]Barbara J. Hansen, "Marketing Educational Change to School Boards," Educational Horizons (Winter, 1985): 84.

[133]Peter J. Cistone, "School Boards," Encyclopedia of Educational Research, ed. Harold E. Mitzel, (New York: Macmillan, 1982), 1640.

most have been involved in activities that lead into school board membership.[134]

School boards seem to have become less representative of the multiethnic, multicultural communities they serve. The total minority representation on school boards declined from 4.7 percent in 1906 to 3.4 percent in 1991. Although the country's Hispanic population is climbing rapidly, the percentage of Hispanic board members has come down. The percentage of women on school boards decreased to 34.7 percent from 1986 to 1991. However, once elected to the board, women are as likely to become board president as men are. The percentage of men and women school board presidents is about the same.[135]

Data gathered from a 1991 survey by the North Carolina School Boards Association revealed that there are 133 local school boards within the state (See Table 2). There are 903 board members serving on these boards with 71.8 percent of the members being male, and 28.2 percent being female. The number of white members is approximately 82 percent, while black members make up about 17.1 percent of the population of

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[134]Peter J. Cistone, "School Board Members, Their Skills Before They become Board Members," American School Board Journal 165, No. 1 (1978): 32.

[135]"Leadership," in Education Vital Signs, (Alexandria, Va: National School Boards Association, December 1991), 10.

members. There are .07 percent classified as "other" members serving on the local boards.

The age range of North Carolina school board members indicated very little difference from the national statistics. (See Table 1.) The majority of school board members in the state fell into the 40-49 age bracket. Next was the 30-39 age bracket, but following very closely was the 50-59 group. There are several members within the 60-69 category, a few less in the 70-79 age group, and four members in the 80-89 bracket. There were only three members in the 20-29 bracket, and only one in the 10-19 age group. It can be observed that this majority of school board members in the state are at least forty years old and older. A correlation between age and work experience could have a direct effect on this phenomenon.

The majority of school board members throughout North Carolina are elected in either November or May, which indicates either the general election time or the primaries. One of these boards elects members in March, two boards elect members in October, and three boards elect members in December. These elections are usually special elections conducted just for this purpose. The majority of boards (98) elect members on a nonpartisan basis. Thirty-four boards elect members on a partisan basis. Five boards are totally appointed. Nine boards have members that are appointed by the

city council. Two boards have members appointed by the county commissioners.

Almost all of the boards have staggered terms. This method prevents so many dramatic changes from occurring at once which could disrupt school district operations or projects. Seven boards limit terms to 2 years; two boards limit terms to 3 years. Many systems are presently exploring the possibility of mandatory length of terms for board members. This has not come into fruition as yet, but discussion about it continues.

Twenty-three boards have members elected from districts by voters within the district. Thirty-five boards have members elected from districts by voters in the administrative unit voting at large. Seventy-one boards have members elected by voters at large. Six boards have other methods of board member selection.

Practically all board members in North Carolina receive some type of pay or other compensation. It is interesting to note that 77 chairmen receive more compensation than board members. One hundred nine boards compensate the board chairman. There are 108 boards that compensate board members. A lot of boards have the option of determining the amount the members will receive, while 34 boards have the amount of compensation determined by their county commissioners. One

board has the amount of compensation determined by a city council.[136]

The amounts of the compensation for board members also vary a great deal, with the lowest pay received being between $5 and $25. The greatest amount of compensation received by a board member ranges between $500 and $850. These figures do not include travel to and from local board meetings, district and state meetings, and national meetings. Many board members also attend regional meetings held on an annual basis within the Southeast.[137]

## Effective School Board Operations

One of the first steps toward becoming a more effective school board member is for the local board to identify goals for the school system. A board must set goals and constantly access the progress made toward achieving these goals. Also, local school boards must anticipate future needs of the schools and readjust these goals as necessary.[138]

Goldhammer determined that there were two primary reasons that a person seeks school board membership. First, an

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[136]North Carolina School Boards Association. "1991 School Board Profile," Voice, (Winter, 1991-92): 19-22.

[137]Ibid.

[138]Theodore J. Kowalski, "Why Your Board Needs Self-Evaluation," American School Board Journal 168, No. 7 (1981): 21-22.

individual becomes a board member because he or she wants to render an important service. Second, a member is motivated as the result of being dissatisfied with some policy or person. Also, a combination of motives probably helps each candidate to make the decision to seek office.[139]

John Marlowe listed five categories of reasons why individuals run for the school board: 1) financial gain, 2) ego gain, 3) political gain, 4) personal, social, or political causes, and 5) service for the good of the school and community.[140] Most school board members hold their office because they sincerely want to render an important public service. Regardless of the motive, most school board members believe strongly in the importance of public education.[141]

Reeves stated that the citizens should select board members with qualities found in a good person and citizen:

1. Being interested in the development of children and having a strong belief in the importance of their education in the public schools.

2. Being foresighted and farsighted in helping to plan public education for the future.

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[139]Goldhammer, 88.

[140]John Marlowe, "One Man's Opinion: Why You Run for School Board Office," American School Board Journal 166, No. 7 (1988): 17-19.

[141]Reeves, 108.

3. Being successful in his or her profession.

4. Being accustomed to making decisions promptly and with dispatch.

5. Being willing and able to devote time and energy to the work of the school board.

6. Have a strong loyalty to democratic processes and being able to subordinate personal opinions and desires to the work of the school board.

7. Being open to conviction and subject to change when proven wrong, even after a stand has been taken.[142]

Many current educational practices, theories, and issues can be better understood in light of past experiences. A knowledge of the history of education can yield insight into the circumstances involved in the evolution of the current educational system as well as practices and approaches that have been found to be ineffective or unfeasible. Studying the history of education might lead one to believe that not only is nothing new under the educational sun, but also that educators never seem to learn by their mistakes; some practices seem to appear and disappear with regularity.[143] Steven J. Knezevich contended that "There is little to suggest

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[142]Charles G. Reeves, School Boards: Their Status, Functions, and Activities (New York: Prentice-Hall, 1954), p. 102.

[143]L. R. Gay, in Educational Research: Competencies for Analysis and Application (Columbus, Ohio: Merrill Publishing Co., 1981), 145.

that the local board of education is any less controversial today than it was 100 years ago."[144]

Ann Miehl, in an article discussing the reassessment of curriculum, sees educational change as a spiral phenomenon with each loop profiting from the other. She has tested the spiral pattern on a number of educational issues, including the individualized versus group instruction question:

> During the depression years, when interest developed in helping children become more skillful, involved members of groups, new information on the dynamics of groups was available. The profession also could carry into the new movement better understanding of the individual within the group. At each new turn of the spiral the practices advocated could be more sophisticated, for educators could look back on the experiences had at previous positions on the lower levels of the spiral and could build into a new whole the useful residue from each previous stage.[145]

As Miehl's position indicates, a knowledge of the history of education cannot only increase understanding of the present but also facilitate anticipation of future trends.[146]

Researchers have analyzed school board effectiveness many times over the years. Perhaps one of the most comprehensive studies was done by Harmon L. Zeigler in terms of democratic

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[144]Stephen J. Knezevich, Administration of Public Education, 2nd ed. (New York: Harper and Row, 1969), 213.

[145]Ann Miehl, "Reassessment of the Curriculum--Why?" in A Reassessment of the Curriculum, ed. D. Huebner (New York: Teachers College Press, 1964).

[146]Ibid.

versus professional criteria. His study indicates that a democratic model of school board effectiveness has the following characteristics:

1. Competition for board positions is vigorous; campaigns between competing candidates are phrased in terms of basic differences in educational philosophy.

2. Successful candidates seek to implement their ideology by controlling the educational policies for the district.

3. Board members are "responsive" to their constituents, and attentive to group demand. They "do what the people want."

4. The superintendent is accountable to the people through the board. He/she does not make policy, but rather implements the policy of the board. He/she is a manager.

5. Thus a chain of direct accountability is maintained: the superintendent to the board, and the board to the community.[147]

The professional model of school board effectiveness contains significantly different criteria:

1. Since professional services may not be subject to nonprofessional judgement, competition for the board positions should not be decisive. Rather, candidates

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[147]L. Harmon Zeigler, "What Makes School Boards Effective?" Paper Presented at the 36th Annual Meeting of the National School Board Association, San Francisco, Calif., (April 10-13, 1976): 6.

should seek such positions on the assumption that educational philosophy is best negotiated without widespread public interest.

2. Successful candidates should not seek to impose their will upon the district. The clients of the school, students, do not participate in school board election.

3. Therefore, board members need not be responsive to the larger community or its component groups. They should not necessarily do what "the people" want.

4. Rather, the board should defer to the superintendent, who has the requisite training and expertise to make sound decisions. The role of the board is largely that of selecting a competent superintendent.

5. Effective boards are those which provide sufficient autonomy for a superintendent to provide appropriate professional services to the clientele of the education system.[148]

All school boards operate differently, whether it be in North Carolina or in another state. School boards are different, not only in the attitude of board members, but also in the function they perform. Boards are public bodies, performing a service for a portion of the public rather than the public at large. Hopefully, the public gains benefits, but the primary clients of the school are students for whom

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[148]Zeigler, 7.

professional services are provided. The welfare of the "client" should be the major concern of school boards.[149]

Board membership varies across North Carolina. The majority of boards (59) have five members. Forty-three boards have seven members. Figures reduce dramatically with eighteen boards having nine members. Eight boards have six members, three boards have eight members, and three other boards have 11, 12, and 15 members respectively.

The majority of school boards take care of their business in one session per month. However, there are occasions when boards must meet more than once a month to discuss other items, especially during budget preparation time. Most of the boards surveyed start their meetings around 7:30 p.m. Some boards alternate day and night meetings to coincide with school visitations and other functions. Also, some members have work conflicts which could prevent them from attending the meetings. Retreats are also taken by some boards in order to conduct business away from the regular meeting places. School facilities are also popular meeting places for boards who wish to get closer to their constituents in the communities which they represent.

Supplemental school taxes are collected by some school districts to offset expenses for capital outlay projects, current expense, debt of bonds, and funding for educational

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[149]Zeigler, 8.

foundations. Nine boards have a supplemental tax for debt on bonds, and 55 boards have an education foundation.

The greatest concern of the board members should be the education of children within their respective districts. The question of what works best in determining overall school board operations can only be answered by the boards themselves. What works for one board may not work for another. The key issue depends upon how boards choose to define or measure their own effectiveness as a governing body.

The principle duties of a local school board may be divided into four main categories. These are 1) setting educational policy, 2) staffing the schools, 3) guarding the assets of the school system, and 4) assessing and presenting the needs of the school system to the general public and the county commissioners or city council members (to ensure adequate funds for operation).[150]

To help school boards identify their strength and areas needing improvement, the following characteristics of an "effective" school board are listed:

1) An effective board addresses more of its time and energy to education and educational outcomes.

2) An effective board believes that advocacy for the educational interests of children and youth is its primary responsibility.

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[150]Anne M. Dellinger, A Legal Guide for NC School Board Members (Chapel Hill: University of NC Institute of Government, 1978), 2-3.

3) As effective board concentrates on goals and uses strategic planning to accomplish its purposes.

4) An effective board works to ensure an adequate flow of resources and achieves equity in their distribution.

5) An effective board harnesses the strengths in diversity, integrates special needs and interests into the goals of the system and fosters both assertiveness and cooperation.

6) An effective board deals openly and straightforwardly with controversy. Boards must realize they will sometimes win and sometimes lose.

7) An effective board leads the community in matters of public eduction, speaking and responding to many forms of participation by the community.

8) An effective board exercises continuing oversight of education programs and their management, draws information for this purpose from many sources and knows enough to ask the right questions.

9) An effective board, in consultation with its superintendent, works out and periodically reaffirms the separate areas of administrative and policy responsibilities and how these separations will be maintained.

10) An effective board, if it uses committees, determines the mission and agenda of each, ensuring coherence and coordination of policy and oversight functions.

11) An effective board establishes policy to govern its own policymaking and policy oversight responsibilities, including

explicit budget provisions to support those activities.

12) An effective board invests in its own development, using diverse approaches that address the needs of individual board members and the board as a whole.

13) An effective board establishes procedures for selecting and evaluating the superintendent. It also has procedures for evaluating itself.

14) An effective board collaborates with other boards through its statewide school board association and other appropriate groups to influence state policy and the way state leadership meets the needs of local schools.

15) An effective board understands the role of the media and its influence on public perceptions, develops procedures with the school administration for media contact and avoids manipulating media attention for personal gains.[151]

The effectiveness of any board of education can usually be measured by the performance of its respective individual members.

## Elected Versus Appointed Boards of Education

Development of education policy is the responsibility of school boards. As a result, the public holds school boards

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[151]"How Can a School Board Become More Effective?" School Board Memo, (Alexandria, Va.: National School Boards Association, 1986), 19-20.

accountable for the quality of education within a community. Continued success of America's program of public education is dependent upon the selection of able men and women, voluntarily serving as board members, who will determine the board policies under which schools operate.

Because school boards represent the community in establishing the school district's educational program, the selection of school board members is of major significance. And as public education increases in size and complexity and as its problems become more urgent, the quality of people serving on school boards becomes of increasing concern to the citizenry.

There is some difference of opinion among school administration authorities as to whether board members might best be selected by elections or through an appointment process. In either case the question also is raised on whether the selection procedure should be on a nonpartisan or partisan basis. Advantages and disadvantages can be cited for any method of selecting school board members. Generally, it can be assessed that most professional educators endorse nonpartisan election as the most desirable method of board selection. Ward G. Reeder pinpoints the view of school administration authorities when he says:

> school board members should be elected by popular vote at a non-partisan election; by non-partisan it is meant that the politics of the candidates should not appear on the ballot or be a consideration in the election campaign. Popular election is

> recommended, because it permits the people to express themselves directly on school matters and gives the members whom the people select a definite feeling of responsibility to the electorate. Appointment of school board members by mayors, by councils, by judges, and by similar agencies is here frowned upon because of the danger of domination by a selfish interest, 'political' or otherwise. But these appointive methods sometimes work well, and they always work well when the appointers are intelligent and altruistic.[152]

According to Archie R. Dykes, school board election advocates tend to believe that elected officials are more responsive to the will, that the general populace is better represented by having a direct vote in the decision-making process, and that elected members act in the best interest of the schools and interact more effectively with its superintendent and professional staff. The advantages of an appointed board are that there is a greater selectivity of board members, more harmonious working relationship between the school board and local government officials, assumed board stability and continuity, and less controversy during elections.[153]

It seems the debate continues concerning how school board members should be chosen. The dominant issue is whether local districts should elect or appoint board members. The question

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[152]Ward G. Reeder, Fundamentals of Public School Administration, 4th ed. (New York: Macmillan 1958), 65.

[153]Archie R. Dykes, School Board and Superintendent: Their Effective Working Relations (Danville, Ill., 1965), 173-176.

remains regarding which method produces the most effective (or productive) board members. This issue does not seem to have a definitive answer. Different school districts have different methodologies for their respective selection systems.

Voters in a school district do not have the direct right to elect or appoint board members. More precisely, it is the state legislature that prescribes the method of selection. In this respect and from a technical point of view, board members are state rather than local officials. In some states, laws give school districts the option of appointing or electing board members. If a national method of selection were chosen to replace the present system of choice prescribed indirectly by the Tenth Amendment, political chaos would result.

The concentration of appointive school boards is found in large city school districts and in six southern states where the appointive method is used in some districts of Georgia, Maryland, North Carolina, South Carolina, Tennessee and Virginia. According to White, approximately 14 percent of the nation's school boards were appointed, with 26.6 percent of those representing school district enrollments of 15,000 or more.[154] The following information is a list of states where appointed school boards exist and explains the appointment characteristics:

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[154]Ibid.

**ALABAMA** In cities with 2,500 or more inhabitants school board members are appointed by the cities governing body.

**CALIFORNIA** The city of Sacramento has the only appointed school board which is appointed by the city council.

**DELAWARE** The Alexis I. Dupont School District's school board members are appointed by the resident judge of the superior court of New Castle county. Boards of education of vocational-technical school districts are appointed by the governor.

**GEORGIA** County school boards are appointed usually by the grand jury which administers all dependent school systems. Independent boards of education are appointed by the governing body of the municipalities they serve.

**ILLINOIS** The city of Chicago School District's board of education is appointed by the mayor with the consent of the city council.

**INDIANA** School boards can be appointed by the mayor of the city or township.

**MARYLAND** Its 23 county boards of education and one city board of education are appointed by the governor except in 10 counties (Allegheny, Carroll, Charles, Garrett, Howard, Kent, Montgomery, Prince Georges, Somerset, and Washington). Baltimore city schools are governed by a board of commissioners who are appointed by the mayor with the consent of the city council.

**MICHIGAN** Boards of intermediate school districts are appointed by a board composed of one representative from each underlying school district.

**MISSISSIPPI** The Board of Trustees for the municipal separate school districts are appointed by the governing body of that municipality. Agricultural high schools are governed by trustees appointed by county supervisors.

**NEW HAMPSHIRE** Separate school boards are appointed by the city council.

**NEW JERSEY** Municipality of township school districts are governed by a board of education appointed by mayor or other chief executive officer of that municipality or township. County vocational school systems are appointed by the

county executive, by a board of chosen freeholders, or a judge of the county.

**NEW YORK** The city of Yonkers' board of education is appointed by the mayor; the city board of education of New York is appointed by the mayor and borough presidents (although the local community school boards within the city of New York are elected.)

**NORTH CAROLINA** Eleven city school boards are appointed by city council or the county board of education. The majority are elected.

**PENNSYLVANIA** The Philadelphia school district is appointed by the mayor.

**RHODE ISLAND** The governing status of school boards is determined by a meeting of the participating cities and towns.

**SOUTH CAROLINA** Some county boards of education are appointed by the governor. Others are elected.

**VIRGINIA** City school boards are appointed by the city council. Fifty-three county school boards are appointed by the school board selection commission which, in turn, is appointed by the circuit court. In counties with a county manager,

county executive, urban county executive, or county board, members are appointed by the county board of supervisors.

**WISCONSIN** City school boards may be elected or appointed by the city council or the mayor.[155]

There are 19 states that have appointed and elected school board members. Only one state appoints all of its school board members. (See Table Four for information on elected versus appointed school boards by state including the District of Columbia). By comparison, there are 32 states that have elected school board members.[156]

With elections held in 32 of the 50 states, it should be evident that the vast majority of school board members are now elected rather than appointed. Over 86 percent of the 15,000 boards of education across the United States are now elected. While school board members and other school officials elected by the public account for less than 20 percent of the 500,000 plus elected officials at all levels of government, they still make up more than 93,000 people elected to run the public schools. The great majority of selected school officials are board members from 14,721 independent school districts as well as other "dependent" systems, which are school districts under

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[155]National School Boards Association.

[156]Ibid.

some measure of fiscal or administrative control of another type of government. The 757 "other" elected officials within school districts include a total of 292 superintendents.

In a 1962 study of 4,045 school systems in the United States, Alphheus White found that 85.9 percent had elected boards. The proportion of elected board varied inversely with school district size: the smallest school districts--those with enrollments from 1,200 to 5,999--had 86.7 percent elected boards. White's research also revealed that over 90 percent of the elected school boards were located in the Northeast, North Central and West regions of the country.[157]

As mentioned previously, the methods of selecting the best qualified school board members are prescribed by state law. Important variations in the elective method include the use of partisan or nonpartisan ballots, whether the election is held in conjunction with a general election or held separately, whether the selection of members are from the district at large or from subareas of the district, and whether all voters of the district are entitled to participate in the election of all board members or whether the voters of each subdivision of the district vote only for a resident of their subdivision.

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[157]Alpheus L. White, Local School Boards: Organization and Practices (Washington, D. C.: National School Boards Association, 1962), 8.

Recent research conducted by the National School Boards Association indicated that a large majority of school board members were elected in nonpartisan elections.[158] A random sample survey of 788 responding National School Board Association members revealed the following information:

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|---|---|
| Elected in Partisan Elections | 10.3% |
| Elected in Nonpartisan Elections | 86.0% |
| Appointed | 3.7% |

The percentages were found to vary by size of school district, community type, and region of the county. For example, a higher percentage of board members were appointed in school districts enrolling 20,000 or more students (17.2%); those located in urban areas (11.4%); and districts in the South (18.4%).[159] In a National School Boards Association Curriculum Survey done in the Fall of 1979, responses from 214 board members indicated that 94.9 percent were elected and that 5.1 percent were appointed. Responses from superintendents about board members in their school districts revealed that 91.1 percent were elected and that 7.8 percent were appointed. There were 880 respondents in the latter survey.[160]

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[158]Joint survey conducted by the National School Board Journal and Virginia Polytechnical Institute, February, 1987.

[159]Ibid.

[160]Ibid.

The argument that the democratic process can best be served under the elective method might become more important when a greater number of voters participate in board elections. More often than not there is low voter turnout for most school board elections unless there are special issues at stake. However, there remains a vast difference in the selection process in that ninety-five out of 100 school boards (nationally) select members by election, rather than appointment, and more than two-thirds of those members (68.7 percent) are nominated for board service through a sign-up process supported by a petition, with 79.8 percent of the candidates being nonpartisan.[161] Nationally and locally, most boards are elected by a nonpartisan, at-large system. The elections are staggered, so that no board can undergo a complete change of personnel, and elections are held at times other than general elections. There are sixty districts within North Carolina in which board members are elected by voters at large. In twenty-four districts, board members are elected by voters within the administrative unit at large. In the ten districts where board members are appointed, nine are appointed by the city council; one is appointed by the county commissioners.[162]

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[161]Ibid.

[162]North Carolina School Boards Association, "1991 School Board Profile," Voice, (Winter, 1991-92), 19-22.

North Carolina presently has 34 boards elected on a partisan basis, and 98 boards elected on a nonpartisan basis. Of these, nine boards have members appointed by the city council, and two boards appointed by the county commissioners or the boards themselves.

Board members are appointed by the city council in the following North Carolina locations:

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|---|---|
| Hendersonville | 7 members |
| Kinston | 7 members |
| Rocky Mount | 9 members |
| Burlington | 7 members |
| Asheville | 5 members |
| Lexington | 9 members |
| Thomasville | 5 members |
| Tarboro | 7 members |
| Mount Airy | 7 members |

The Randolph County Board of Education is predominately self-appointed through legal procedures, while the Whiteville city board has other means of selection. All other systems are elected either through non-partisan or partisan electoral processes.[163]

In most cases, it is the well-to-do, middle-to upper-class members of a community that are elected or appointed for school board service. Compared to the general public, board

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[163]Ibid.

members have those qualities traditionally admired by the American society. They are more often male, white, middle-aged, better educated, more prestigiously employed, and have been residents longer in their communities. School board members often come from homes where the parents have received education beyond the high school level; moreover, most board members come from backgrounds associated with various forms of education rather than politics.[164]

The manner in which boards are selected reflects a community's desire to be accountable not only to a specific segment of the public, but to the entire community. Board members are often viewed as delegates---doing what the public wants them to do even if it is not their own personal preference---or as trustees using their own judgement regardless of what others want them to do. Sixty-eight and three tenths percent of the nation's board members view themselves more as trustees than as delegates (25.4 percent).[165]

Most board members do not believe they should represent the public's opinion uncritically. They see themselves as best serving the public by acting in accordance with their own judgement. Boards that do seek to represent the public are more likely to oppose the superintendent. If a board seeks to

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[164]Zeigler, 10.

[165]National School Boards Association Survey, 1987.

base its opinions on the wishes of lay constituents, the professional standards of the superintendent will be less significant. If a board regards itself as a trustee, freed of the constraints of public opinion, it will be more responsive to superintendent leadership.

The current education reform movement has brought with it entreaties to strengthen school board leadership by improving their communities' understanding of the board's role. The ultimate output of this will hopefully be an increase in board effectiveness. Some might argue that the effort to keep politics and education separate has succeeded all too well, and that a political approach to education results in a board selection process that does not measure up to democratic standards. National School Boards Association findings suggest that board member recruitment and selection remain removed from partisan politics, but they nevertheless reflect the political process and the shifts and changes in the American public's attitudes and values. Education, it could be argued, is no less political for all that--it is merely subject to a different set of political forces.[166]

Politics and power are critical in the governance of public schools. If politics determine values and the allocation of resources, then the distribution and exercise of

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[166]Ibid.

power determine who gets what, when, and how.[167] This political power may be evidenced by the fact that every school board in North Carolina appointed by city councils or county commissioners has an established supplemental school tax imposed within their respective districts. Ninety-seven of the elected boards do not have a supplemental school tax implemented. Ninety-five out of 100 school boards across America select members by election rather than appointment, while only 4.2 percent of these board members represent a specific political party.[168]

By comparison, it is obvious that elected boards on the state and national levels represent the greater majority of the people. Thus, the conclusion may be made that elected boards are more representative of the people's desires by virtue of sheer numbers. It may also be concluded that vigorous elections contribute to the political health and well-being of the communities in which these elections are held.

The purpose and function of all school boards remains the same--to promote the educational development of students. The types of people who serve on these boards are essentially the same with regard to age, race, social status, and educational

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[167]Beatrice H. Cameron, Kenneth E. Underwood, and Jim C. Fortune, "Politics and Power: How You're Selected and Elected to Lead This Nation's Schools," American School Board Journal (Alexandria, Va., January, 1988): 17.

[168]North Carolina School Boards Association, 19.

background. However, the so-called "rules of the (political) game" are somewhat different regarding elected versus appointed boards. Board business can be conducted differently by appointed boards, since they are without fear of being voted out of office, even if they perform below standard. The voting public has no choice in the matter of member selection when members are appointed. This methodology would appear to conflict with the intent of the Tenth Amendment to the Constitution. And, even though the control/accountability factor can be monitored by the appointing officials, appointed boards are under no obligation to perform according to the desires of the voting public.

The issue of fair representation remains an obstacle for most boards. This highly controversial subject is of significant importance by virtue of the numerous federal and state mandates initiated to enhance equality of the selection processes. Elected boards, especially those within districts, are affected more so than appointed boards, but all boards should remain keenly aware of the laws that pertain to these processes.

Debates regarding the relative methods of selection for school board members will continue and perhaps intensify as new patterns of lay control of education emerge. Because of the vital influence of public interest on any method of selection, there may never be any conclusive evidence in favor of a particular method. The success of any selection

procedure will always be determined by the intelligence, sincerity, and educational concerns of those who do the selecting as well as of those selected to serve.

## Redistricting and The Federal Voting Rights Act

The decade of the 1990s will be one of change for several school systems throughout North Carolina, especially these elected by districts. These changes will occur as a result of rapid growth over the past ten years. If minority representation on boards of education is not proportionate to the minority population as a whole, then redistricting will take place within those districts as mandated by the federal government. In the early 1990s, there are forty counties that will be affected by redistricting within the state.

By law, elected school boards within a district must redraw voting boundary lines every ten years according to the Bureau of the Census. Population data from the 1990 census may require the local governments that have switched, as well as the several others that have had the same districts for some time, to draw new lines. By definition, the word redistrict means "to divide anew into districts; to revise legislative districts."[169]

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[169]Webster's Ninth New Collegiate Dictionary (Springfield, Mass, GYC Merriam company, 1985), 987.

The equal protection clause of the Fourteenth Amendment to the Constitution requires that "no State . . .deny to any person within its jurisdiction the equal protection of the laws."[170] The Supreme Court has determined that the concept of equal protection requires one person's vote to be counted the same as the vote of another in local, state, and national elections.[171]

The principle of "one person, one vote" provides that elected representatives in the same legislative body should represent an equal number of people. The Supreme Court first enunciated this goal in Gray v. Sanders[172] when it struck down Georgia's unit vote system in Democratic party primary elections for state-wide offices. In 1964, Reynolds v. Sims[173] clearly set forth the proposition that equal numbers of voters should have the opportunity to elect an equal number of representatives. In Reynolds, suit was brought because the Alabama legislature had not been reapportioned in over sixty years. The Court ruled that this lack of reapportionment resulted in an unconstitutional allocation of voting strength because districts containing only twenty-five percent of the

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[170]U.S. Constitution, amend. XIV, sec. 1.

[171]See E.G., Board or Estimate v. Morris, U.S. 109 S. Ct. 1433 (1989).

[172]372 U.S. 368 (1963).

[173]377 U.S. 533 (1964).

population could elect a majority in each house of the legislature. The Court held that legislators represent people, not areas, and that weighing votes differently according to where people happen to reside is discriminatory.[174] Overall, the simple conclusion of these cases is that one person's vote should count the same as the vote of another.

The "one person, one vote" rule of Reynolds v. Sims has been held to apply to local as well as to state legislative elections, despite early decisions to the contrary. The first Supreme Court decisions on local apportionment came from Sailors v. Board of Education[175] and Dusch v. Davis.[176] Sailors held that the one person, one vote principle did not apply to the selection of the Kent County, Michigan school board because the board was (1) "basically appointive rather than elective"[177] and (2) administrative rather than legislative."[178] In Dusch v. Davis, the Supreme Court upheld Virginia Beach, Virginia's system of electing its consolidated city council despite its use of residence districts for seven of the eleven members. The election

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[174]Id. at 561-68.

[175]387 U.S. 105 (1967).

[176]387 U.S. 105 (1967).

[177]Sailors, 387 U.S. at 109.

[178]Id. at 109-10.

system required at least one city council member to reside in each of the city's seven boroughs, which varied greatly in population; the court reasoned that the council members were representatives of the entire city rather than of the borough in which they resided.[179] Accordingly, in the opinion of the court, every voter received equal representation despite the varying sizes of the districts. These early cases did not, however, provide the court with the opportunity to address the application of the one person, one vote principle to a single-member or multiple-member district system for electing a local legislative body.

Since the one person, one vote principle applies to local as well as state legislative apportionment, the remaining question is what degree of mathematical perfection between districts is required by the equal protection clause. The answer is that the Supreme Court has been willing to allow some numerical inequalities at both the state and local level. In fact, the holding in Reynolds v. Sims did not require exact numerical equality among state legislative districts. In its opinion, the court stated that "the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts. . . as nearly of equal population as is practicable. We realize that it is a practical impossibility

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[179]Dusch, 387 U.S. at 114-16.

to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters."[180]

In 1969, The U.S. Supreme Court set forth a far more restrictive standard in Kirkpatrick v. Preisler.[181] That decision invalidated a Missouri apportionment plan where no district differed from the mathematical ideal by more than 3.13% and where the maximum deviation was 5.97% from the largest district to the smallest.[182] The Court announced that even minor deviations would only be permissible if they were the unavoidable consequence of an attempt to reach mathematical perfection.[183] The Kirkpatrick holding, however, concerned congressional and not state or local apportionment.

In 1971, Abate v. Mundt[184] started a trend toward considerable tolerance of small deviations in state and local apportionment. In Abate, an 11.9 percent maximum deviation between districts was permitted in the apportionment of a county's legislative body.[185] The Court felt the deviations were justified because the local body reflected a "long

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[180]377 U.S. at 577.

[181]394 U.S. 526 (1969).

[182]Id. at 528-30.

[183]Id. at 530-31.

[184]403 U.S. 182 (1971).

[185]Id.

history of, and a perceived need for, close cooperation between the county and its constituent towns.[186]

In Connor v. Finch[187] the Court propounded that a de minimis maximum deviation of "under 10 percent is considered to be of prime facie constitutional validity."[188] The most extreme example of the relaxation of the mathematical equality standard at the state level is Brown v. Thompson.[189] In Brown, a provision of the Wyoming constitution that issued at least one representative for each county resulted in a 60 percent maximum population deviation between districts.[190] The majority upheld the apportionment plan because of Wyoming's historical adherence to county boundaries.[191] More important, the Brown Court reiterated that for state legislative apportionment, population disparities ranging up to 10 percent maximum deviation from the largest district to the smallest district, was de minimis and did not require justification by the state.[192]

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[186]Id. at 186.

[187]431 U.S. 407 (1977).

[188]Id. at 418.

[189]462 U.S. 835 (1983).

[190]Id.

[191]Id. at 845-48.

[192]Id. at 842-43.

As a result of the holding in Conner v. Finch and Brown v. Thompson, it is clear that an overall deviation of less than 10 percent between the population of the largest district and the smallest district in a local or state elections prime facie de minimis would not require governmental justification. The Supreme Court has also expressed a willingness to tolerate deviations of 10 percent or greater, depending on the particular circumstances and governmental rationale of an apportionment plan.

**Political Gerrymandering**

When one political party controls the redistricting process, it can use that control to enhance its members' chances in future elections. Prior to 1986, the Supreme Court refused to hear suits concerning "political gerrymandering." In that year, the Supreme Court held that political gerrymandering claims were justifiable and are not barred by the argument that it was a "political question". The Court in Davis v. Bondemer[193] held that political gerrymandering could rise to a level of an equal protection violation. Although this issue is not justiciable, the courts have yet to find an instance of political gerrymandering. The standards used to determine the circumstances under which gerrymandering

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[193]478 U.S. 109 (1986).

violates the equal protection clause will have to be more clearly defined.

**Section 5 of the Voting Rights Act of 1965**

Congress passed the Voting Rights Act in 1965 to eliminate discrimination against Blacks, Hispanics, Native Americans, and certain other minority citizens in the election process.[194] Section 5 of the act requires certain jurisdictions to obtain "preclearance" in any changes in their election procedures being implemented.

Preclearance as prescribed by Section 5 prohibits the enforcement in any covered state or political subdivision, of any voting qualification or prerequisite, standard practice, or procedure with respect to voting different from that date used to determine the jurisdiction's coverage until approval is obtained from either the United States District Court for the District of Columbia or the United States Attorney General.

Justice John Paul Stevens, in a reference to preclearance, has stated that:

> This so-called 'preclearance' requirement is one of the most extraordinary remedial provisions in an Act noted for its broad remedies. Even the Department of Justice has described it as a 'substantial departure . . . from ordinary concepts

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[194]Michael Crowell, "The Voting Rights Act in North Carolina--1984," Popular Government 50 (Summer, 1984): 1-9.

> of our federal system;' its encroachment on state sovereignty is significant and undeniable.[195]

Despite the extraordinary nature and breadth of Section 5 of the Act as amended, 42 U.S.C. 1973C, it has seldom created the need for litigation. The United States Supreme Court sufficiently defined the contours of Section 5 in 1969 as well as in the decade of the 1970s. When Congress significantly amended Section 2 of the Act in 1982, it left Section 5 essentially untouched. Any conflict over election, procedures in "covered" jurisdictions now is largely settled by the Attorney General of the United States. Generally, a jurisdiction is covered by Section 5 if on November 1, 1964, it utilized a literacy test or similar device and if less than half of the persons of voting age were registered or voted in the 1964, 1968, or 1972 presidential elections. Nine states and approximately 75 political subdivisions within seven of these states are currently covered by Section 5. The entire Commonwealth of Virginia and 40 counties in North Carolina are covered by Section 5. As a result all cities and school boards within them are subject to Section 5 as well.

The congressional purpose behind Section 5 was to establish procedures through which voting changes could be scrutinized by a federal instrumentality before they became

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[195]United States v. Board of Commissioners of Sheffield, Alabama, 435 U.S. 100, 141, 98 S. Ct. 965, 984, 55 L.Ed. 2d. 148 (1978) (Stevens, J., dissenting).

effective. In the seminal Section 5 case, the United States Supreme Court held that Section 5 reaches any state enactment that alters the election laws of a covered jurisdiction "in even a minor way."[196] The federal courts have interpreted Section 5 expansively.

The Attorney General also suggests that the following "supplemental" information accompany the submission of a redistricting change: 1) Demographic information showing (a) the total and voting age population of the affected area before and after the change, by race and language group; (b) the number of registered voters for the affected area by voting precinct before and after the change, by race and language groups; and (c) any estimates of population, by race and language group, made in connection with adoption of the change; 2) duplicated maps showing (a) the prior and (b) new boundaries of voting precincts; (c) the location of racial and language minority groups; (d) any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units; (e) the location of prior and new polling places, and (f) the location of prior and new voter registration sites; 3) election returns showing (a) the name of each candidate; (b) the race or language group of each candidate, if known; (c) the position sought by each candidate; (d) the number of votes received by each candidate,

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[196]Allen v. State Board of Elections, 393 U.S. 544, 566, 89 S. Ct. 817, 832, 22 1.Ed. 2nd 1 (1969).

by voting precinct; (e) the outcome of each contest; and (f) the number of registered voters, by race and language group, for each voting precinct for which election returns are furnished. Election information for elections during the last ten years will normally suffice.

There is no specific form required for submissions of redistricting changes. The requests may be made by letter or any other written form. Submissions involving controversial or potentially controversial change should contain evidence of public notice, of the opportunity for the public to be heard, of the opportunity for interested parties to participate in the decision to adopt the proposed change, and an account of the extent to which such participation, especially by minority group members, in fact took place.[197] The Attorney General has 60 calendar days from the date of receipt of the submission to interpose an objection.[198]

Section 5 includes all final changes enacted by a covered jurisdiction. Enforcement of the change by a covered jurisdiction is unlawful without preclearance from the Attorney General or the District Court for the District of Columbia. Failure to obtain preclearance in a timely manner is likely to have a potentially disruptive effect on the affairs of the submitting jurisdiction that far outweighs the

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[197]28 C.F. R. Section 51.28(f).

[198]28 C.F.R. Section 51.9.

benefits possibly gained by delaying the submission. Section 5 preclearance should therefore be sought as soon as the proposed change becomes final.

**Section 2 of the Voting Rights Act**

Section 2 of the Voting Rights Act[199] was enacted in 1965 to assist in the effectuation of the Fifteenth Amendment right to vote. Section 2 also applies to all protected classes of racial and language minorities, and is applicable to all counties in North Carolina.[200] This section of the act specifically prohibits any form of discrimination in the election of public officials. The usual outcome of a Section 2 violation is the formation of a district system of election in which black voters have a majority in some districts.

Prior to 1982, the Supreme Court of The United States declared that, in order to establish a Section 2 violation, minority voters would have to prove that the challenged electoral methods were intentionally adopted or maintained by government officials for a discriminating purpose. Then, in 1982, Congress amended Section 2 to make clear that a violation could be proved by showing the discriminating effects of electoral methods employed in the political

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[199]42 U.S.C. Section 1973 c.

[200]Thornburg v. Gingles, 478 U.S. 30 (1986).

subdivision.[201] The question for the courts in Section 2 cases is whether plaintiffs have an "equal opportunity to participate in the political processes and to elect candidates of their choice."[202] Section 2 is aimed at preventing vote dilution and denial of access to the electoral system. Vote dilution is the most frequent claim in Section 2 suits.[203]

In some cases, plaintiffs have challenged electoral practices such as the use of poll taxes, literacy tests, and prohibitions on single-shot voting. These practices represent some of the historical forms of denying or subverting access to the electoral process, and they have been gradually eradicated in most jurisdictions as evidenced in Thornburg v. Gingles. Numerous electoral methods employed by political subdivisions have been challenged under Section 2 as directly contributing to vote dilution. A plaintiff must show that a direct relationship exists between the claimed adverse result and the electoral method being challenged. If the particular standard, practice, or procedure in a given political subdivision has discriminating results, Section 2 is violated.

Examples of the types of electoral methods reviewed by the courts include at-large voting schemes, multi-member

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[201]Senate Rep. No.97-417, 97th Cong. 2d sess. 28 (1982), U.S. Code Cong. and Admin. New 1982, pp. 177-205.

[202]Id.

[203]McGhee v. Granville County, 860 f. 2d. 110 (4th Cir. 1988).

districts, majority vote requirements, numbered post systems, packing, fragmentation, and submergence.

At-large voting schemes involve one or more representatives being elected from the whole of a political subdivision, such as a county or city, rather than for a particular district within that subdivision. The size and number of districts may create vote dilution. Majority vote requirements occur when each candidate must command a majority of the votes cast in order to be elected. Combined with racial bloc voting, this method often works to defeat minority candidates. Numbered post systems occur when each candidate runs for a specific seat in an at-large or multimember district election. This method defeats the use of single-shot voting. Packing means that boundaries are drawn to achieve consolidation of minority votes into a small number of districts in a single-member system. This device minimizes the number of districts in which minorities are likely to elect a candidate. Fragmentation means boundaries are drawn so that minority votes are split into two or more districts. Minorities are thus unable to command a majority in any district. Finally, submergence occurs when boundaries are drawn to achieve a concentration of minority voters in districts controlled by voters particularly hostile to minorities. This device allows a white majority bloc vote to defeat the minority vote.

The United States Supreme Court has identified three preconditions that must be met in order for a party to succeed on a claim of vote dilution. If the plaintiff cannot establish the Supreme Court preconditions, the courts will not look further to consider any of the following Senate Judiciary Committee factors:

1. the minority group must show that it is sufficiently large, and geographically compact, to constitute a majority in a single member district;

2. the minority group must show that it is politically cohesive and

3. the minority group must show that the white majority votes as a bloc.[204]

Once a Section 2 violation is determined, the court may enjoin further elections and order the development of a new plan. Any new plan proposed by a governmental unit must be submitted for preclearance pursuant to Section 5.[205] In some cases, remedying Section 2 violations may require drawing district lines so that minority voters will constitute a majority of a district's total population, or a majority of its voting age population.[206] A court may create new single member districts or a combination of single-member and multi-

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[204]Thornburg v. Gingles, 478 U.S. 30 (1986).

[205]Collins v. City of Norfolk, 883 F. 2d. 1232 (4th Cir. 1989).

[206]United Jewish Organizations, Inc. v. Carey, 430 U.S. 144 (1977).

member districts.[207] The courts give deference to legislatively enacted plans. Such plans may satisfy Section 2 requirements even though they contain some at-large or multimember districts.[208]

**Summary**

The composition of local school boards varies in many ways across North Carolina and the United States. Each board possesses its own traits and personality in the performance of duty as a public entity. Through the years the requirements and expectations placed upon school board members have taken their toll on the overall composition of these boards. The turnover rate in school superintendents' positions often increases when the composition of school boards changes through elections or resignations. Nonetheless, the demographics of local school boards continue to remain an interesting and informative way of observing school board operations whether elected or appointed.

There are forty counties in North Carolina that must submit plans for redistricting to the United States Justice Department for preclearance every ten years, or immediately following each census. There is no particular state law that

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[207]Wise v. Lipscomb, 437, U.S. 535 (1978).

[208]NAACP, Inc. v. City of Statesville, 606 F. Supp. 569 (W.D.NC. 1985).

outlines the prerequisites of redistricting for local school boards. However, the possibility exists that new legislation could be passed that would allow local boards of education authority to draw their own lines. State law does provide that the boards of county commissioners and the city councils are responsible for reviewing and redrawing, by virtue of the 1990 Census, their own voting districts.[209]

New computer-assisted programs such as the new TIGER[210] data base are available for use by local governments. These programs are used in conjunction with computerized mapping systems which include data from the census that can be used for redistricting. Computer programs are not always necessary or practical for local governments; moreover, an assessment of local resources available for the redistricting process should be done before large sums of monies are invested.

The redistricting process should not be taken lightly by local governments. It is a process that will require much forethought and planning. However, the process can be completed much more easily through the vision, determination, dedication, and cooperation of everyone involved with local government.

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[209]N. C. General Statutes, sec. 153A-22 (counties), 160A-23 (cities).

[210]Topically Integrated Geographic Encoding and Referencing.

TABLE I

NATIONAL PROFILE OF SCHOOL BOARD MEMBERS

| | 1986 | 1991 |
|---|---|---|
| **Sex** | | |
| Male | 63.4% | 65.3% |
| Female | 36.6 | 34.7 |
| **Ethnic background** | | |
| Black | 2.4% | 2.2% |
| White | 95.2 | 96.5 |
| Hispanic | 1.1 | .8 |
| American Indian | .9 | .3 |
| Asian | .1 | .1 |
| Other | .2 | -- |
| **Age** | | |
| Under 25 | .9% | .4% |
| 26-35 | .0 | 5.6 |
| 36-40 | 22.3 | 24.2 |
| 41-50 | 42.8 | 45.6 |
| 51-60 | 21.0 | 18.8 |
| Over 60 | 11.2 | 13.3 |
| **Income** | | |
| Under $20,000 | 5.8% | 1.7% |
| $20,000-$29,000 | 13.2 | 6.4 |
| $30,000-$39,000 | 18.7 | 11.6 |
| $40,000-$49,000 | 18.3 | 14.9 |
| $50,000-$59,999 | 14.3 | 13.7 |
| $60,000-$69,999 | 9.8 | 10.9 |
| $70,000-$79,000 | 4.1 | 9.4 |
| $80,000-$89,000 | 3.7 | 7.7 |
| $90,000-$99,999 | 4.1 | 4.6 |
| More than $100,000 | 8.0 | 16.2 |
| **Where board members live** | | |
| Small town | not available | 25.5% |
| Suburb | | 33.3 |
| Rural area | | 8.8 |

Source: National School Boards Association

TABLE 2

NORTH CAROLINA LOCAL

SCHOOL BOARD FACTS FOR 1991

| | |
|---|---|
| Total number of local boards | 133 |

DEMOGRAPHICS OF BOARD MEMBERS

| | |
|---|---|
| Total number | 903 |
| total male | 652 |
| total female | 251 |
| Total white | 735 |
| Total black | 151 |
| Total other | 7 |

Age Range:

| | |
|---|---|
| 10-19 | 1 |
| 20-29 | 3 |
| 30-39 | 180 |
| 40-49 | 374 |
| 50-59 | 179 |
| 60-69 | 101 |
| 70-79 | 23 |
| 80-89 | 4 |

BOARD MEETINGS

Day of Week:

- 105 boards meet on Monday
- 31 boards meet on Tuesday
- 2 Boards meet on Wednesday
- 13 boards meet on Thursday
- 1 board meets on Friday

Frequency of Meetings:

- 115 boards have 1 meeting per month
- 19 boards have 2 meetings per month

Time of Meetings:

- 8 boards start meeting before noon
- 1 board meets at noon
- 11 boards start meeting between 2:00 and 6:00
- 9 boards start meeting at 6:30
- 45 boards start meeting at 7:00
- 57 boards start meeting at 7:30
- 3 boards start meeting at 7:45
- 7 boards start meeting at 8:00

TABLE 2 (Continued)

1 board starts meeting at 8:30
10 boards vary the starting time of meetings

BOARD MEMBERSHIP

59 boards have 5 members
8 boards have 6 members
43 boards have 7 members
3 boards have 8 members
18 boards have 9 members
1 board has 11 members
1 board has 12 members
1 board has 15 members

BOARD ELECTIONS

Elected:
1 board elected members in March
42 boards elect members in May
8 boards elect members in October
82 boards elect members in November
3 boards elect members in December
34 boards elect members on a partisan basis
98 boards elect members on a non-partisan basis
23 boards have members elected from districts by voters within the district
35 boards have members elected from districts by voters in the administrative unit voting at large
71 boards have members elected at large by voters at large
6 boards have other methods

Appointed:
5 boards are appointed
9 boards have members appointed by the city council
2 boards have members appointed by the county commissioners

Length of Term:
7 boards limit terms to 2 years
2 boards limit terms to 3 years
122 boards have staggered terms

Board Vacancies:
100 boards fill vacancies on the board
11 boards fill vacancies by political parties
3 boards fill vacancies by county commissioners

TABLE 2 (Continued)

9 boards fill vacancies by city councilmen
4 boards fill vacancies by election

BOARD MEMBER COMPENSATION

108 boards compensate board members
109 boards compensate board chairmen
16 boards adjust compensation annually
77 chairmen receive more compensation than board members
56 boards compensate for within-district travel
87 boards determine the amount of compensation
34 boards have amount of compensation determined by county commissioners
1 board has amount of compensation determined by city councilmen

AMOUNT OF MONTHLY COMPENSATION

7 boards pay members between $5 and $25
18 boards pay members between $30 and $65
11 boards pay members between $70 and $95
18 boards pay members between $100 to $125
13 boards pay members between $130 and $190
13 boards pay members between $200 and $295
14 boards pay members between $400 and $499
5 boards pay members between $400 and $499
6 boards pay members between $500 and $850

SUPPLEMENTAL SCHOOL TAX

9 boards have a supplemental tax for capital outlay
27 boards have a supplemental tax for current expense
4 boards have a supplemental tax for debt on bonds
55 boards have an education foundation

*133 local boards, Fort Bragg and Camp LeJeune responding

Source: North Carolina School Boards Association

TABLE 3

ELECTED VS APPOINTED SCHOOL

BOARDS LISTED BY STATE

| States That Have Elected School Board Members | States That Have Appointed and Elected School Board Members | States That Have Appointed Only School Board Members |
|---|---|---|
| Alaska | Alabama | Virginia* |
| Arizona | California | |
| Arkansas | Delaware | |
| Colorado | Georgia | |
| District of Columbia | Indiana | |
| Florida | Maryland | |
| Hawaii | Michigan | |
| Idaho | Mississippi | |
| Kansas | New Jersey | |
| Kentucky | New York | |
| Louisiana | North Carolina | |
| Maine | Pennsylvania | |
| Massachusetts | Rhode Island | |
| Minnesota | South Carolina | |
| Missouri | Tennessee | |
| Montana | Wisconsin | |
| Nebraska | | |
| Nevada | | |
| New Mexico | | |
| North Dakota | | |
| Ohio | | |
| Oklahoma | | |
| Oregon | | |
| South Dakota | | |
| Texas | | |
| Utah | | |
| Vermont | | |
| Washington | | |
| West Virginia | | |
| Wyoming | | |

*To be changed by the end of 1992 (to elected boards)

Source: National School Boards Association

TABLE 4

ELECTED AND APPOINTED SCHOOL BOARD MEMBERS

IN THE UNITED STATES

| Type of Other Public School Elected System | Number of Systems | School Board Members Elected | Appointed |
|---|---|---|---|
| Total | 16,213 | 92,162 | 5,557 | 1,272 |
| School Districts | 14,721 | 86,015 | 2,574 | 757 |
| Dependent Systems | 1,492 | 6,147 | 2,983 | 515 |
| State | 75 | 119 | 3 | 138 |
| County | 584 | 1,569 | 2,292 | 78 |
| Municipal | 235 | 982 | 655 | 299 |
| Township | 648 | 3,477 | 33 | |

Source: National School Boards Association

# CHAPTER IV

# AN ANALYSIS OF SELECT JUDICIAL DECISIONS SUPPORTING SCHOOL BOARD OPERATIONS

## Introduction

In the previous chapter, this study examined the concerns and issues with which the local school boards must contend when faced with the necessity of developing and implementing effective educational policy. Chapter IV details actual court cases school boards may use in order to establish guidelines and policies that decrease the likelihood of litigation. The cases included were all decided between 1940 and 1992. Some cases will focus upon the pecuniary board actions that have placed boards in liable situations for possible civil actions or tort liability due to poor decision making. Thirty-one of the cases involve Supreme Court decisions in which school boards have been directly involved. Some Supreme Court rulings are "landmark" decisions which directly affect the Constitutional rights of groups and individuals. All the cases presented in this section of the study are presented in an effort to analyze the decision-making processes of local boards of education.

The format for this chapter is first to analyze the powers of local school boards and to discuss tort liability which often results from misuse of such powers; second, to

discuss special interest groups which includes a review of an actual case brought against a local school board by a group of concerned citizens; third, a review of selected North Carolina cases involving local boards of education; and finally, a review of significant United States Supreme Court cases that have directly affected local school board decision making.

A closer examination of this chapter suggests that similar decision-making processes may be used by the U.S. Supreme Court justices and school board members when making legal decisions involving education. The Supreme Court technically becomes a defacto school board when creating educational law. This decision-making phenomena is unique in America's democratic society.

## Powers of the Board and Tort Liability

It is a widely accepted belief that boards of education have only those powers that (1) have been expressly granted to them by the legislation of the state or can be reasonably inferred or (2) have been granted to the board of education through the state board of education by rule or regulation. In some states, constitutional provisions grant important powers to local school boards. In any event, the state has granted to boards of education fundamental and impressive

authority to deal with the multitude of problems that face them each day.[211]

Because local school boards are state creations, it follows that school board members are state, not local officials.[212] Local school boards have, therefore, a vested state sovereignty delegated to them through which they acquire certain administrative functions that have attributes of all three branches of government: executive, quasi-judicial, and regulatory or quasi-legislative. As creations of the legislature or constitution, local school districts abide within their legal prerogatives and cannot give away or redelegate their judgmental powers to other agencies or individuals. Legislative functions of the boards include the promulgation of rules and regulations made pursuant to and within the scope of statute. The legislation function performed by boards have been justified on the grounds that the board was merely "filling in the details" within the meaning of general statute."[213] Davis suggests that:

> A legislative Act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative Act cannot be

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[211]"Powers and Duties of Boards," in Yearbook of School Law, (Topeka: National Organization of Legal Problems in Education, 1979), 8.

[212]Board of Education of Louisville v. Society of Alumni of Louisville Made High School, 239 S.W. 2d. 931 (Ky. 1951).

[213]Kenneth C. Davis, Administrative Law Treatise, vol. 1 (St. Paul, Minn.: West Publishing Co., 1958), 5.

> exactly defined, but it includes the adoption of policy, the making and issue of specific direction, and the application of a general rule to a particular case in accordance with the requirements of policy or expediency or administrative practice.[214]

In their tripartite capacity, administrative boards hand down many more decisions affecting individuals than do the formal courts of America. Decisions by educational tribunals form an important source of law under which education operates. Authority for decisions by educational tribunals may be found at federal, state, and local levels. Because school boards have tripartite jurisdictions--legislative, executive, and quasi-judicial--it is not uncommon for a board to act in judgement in its own cause. Because of the nature of the governmental system, this problem cannot be avoided.[215] This particular issue has been litigated before the U. S. Supreme Court. The Court held that the mere fact that a public agency is, as a body, a party to a dispute before it is not alone is indication of bias sufficient to violate due process.[216]

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[214]S. A. de Smith, Judicial Review of Administrative Action (London: Stevens and Sons, 1973), 60.

[215]Kern Alexander and M. David Alexander, "Governance of Public Schools," in American Public School Law (St. Paul, Minn.: West Publishing Company, 1991), 78.

[216]Boyd v. United States, 116 U. S. 616, 6 S. Ct. 524 (1886), 29 C. Ed. 746.

In most states, the local public school systems have been characterized by their respective school board's actions. Typically, creative local school districts are eager to introduce new policies and practices which are aimed at improving their students' academic performance. Usually, the boards are given broad authority and power within the scope of their decisionmaking capabilities. Creative local school districts often announce the introduction of a new practice. In legal parlance, this is exercise of a latent implied power.[217]

Certain aspects of the educational function regarding board responsibilities are classified as state as well as local in nature. The legal aspects do not change, even through certain aspects of the education function may be delegated to local authorities. Local school board members are elected or appointed as mandated by the general statutes. They hold office by virtue of legislative enactment, and their powers may be extended or limited at the discretion of the legislature.

It is important to note that school boards have what is termed "implied" powers, but these powers are only related to education and not governmental concerns. Boards of education may not expand their powers in an effort to override state-mandated legislation.

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[217]Edmund E. Reutter, Jr., The Law of Public Education, 3rd ed., (Mineola, N. Y.: Foundation Press, 1985), 1-139.

Boards of education have the implied power to make and enforce reasonable rules and regulations for the efficient operation of schools. The question of what is reasonable is often most difficult to answer. The variance of these rules and regulations and their interpretation have helped create a large number of court cases involving board policy and decisionmaking. It is generally presumed that a board has acted reasonably in carrying out its duties. The burden of proof is placed upon the party contesting the rule.[218] According to Black's Law Dictionary, the word "tort," which comes from the Latin word "torquere," means

> A private or civil wrong or injury, including action for bad faith breach of contract, for which the court will provide a remedy in the form of an action for damages. A violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction. A legal wrong committed upon the person or property independent of contract. It may be (1) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrue to the individual; or (3) the violation of some private obligation by which like damages accrues to the individual.[219]

School board members, as public officials, enjoy a sovereign status, whereas teachers and principals are public employees, and therefore liable for their tortious acts as are all other

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[218]Ibid.

[219]Henry C. Black, Black's Law Dictionary, 6th ed., (St. Paul, Minn.: West Publishing Company, 1990).

citizens not holding public office.[220] Board immunity from tort liability will be addressed later in this chapter.

Tort liability has developed into one of the more controversial and litigious issues of school law. Perhaps there has been no more significant school matter litigated in the state courts over the past decades than that of tort liability.[221] As mentioned, a tort is a private injury or wrong arising from a breach of a duty created by law. It is often defined as a wrong independent of contract. Most torts, although not all, involve moral wrongs. However, not all moral wrongs are torts. The area of tort law includes harm to the person as well as the property, caused negligently or intentionally. The mere fact that a person is hurt or harmed does not mean that he or she can sue and recover damages from the person causing harm. There must exist an organized basis for liability. The defendant must be guilty of a voluntary act or omission. Whether intent to do an unlawful act, or intent to cause harm is required as a basis for tort liability, depends upon the nature of the act involved.[222]

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[220]Edward C. Bolmeier, "Liability for Pupil Injury," Judicial Excerpts, (Charlottesville, Va.: The Michie Co., 1977), 253.

[221]Edward C. Bolmeier, "School District Tort Liability," The School in the Legal Structure, (New York: Macmillan and Co., 1973), 137.

[222]Ibid.

As a general rule, negligence is the violation of the duty to exercise the required degree of care, which in turn causes another harm. A duty of care is required, which constitutes the avoidance of foreseeable harm. The plaintiff ordinarily has the burden of proving that the defendant did not exercise reasonable care. In some instances, it is sufficient for the plaintiff to prove that the injury was caused by something that is within the control of the defendant. If injury results from such objects only when there is negligence, the proof of these facts is "prima facie" proof that the defendant was negligent. This is expressed by the maxim "res ipsa loquitur" (the occurrence or thing speaks for itself).[223]

As governing bodies, school boards are not legally responsible for damages caused by their negligence or the negligence of their employees unless the state has enacted legislation making local school districts liable for injuries to children entrusted to their care. Some states have given to local school boards the option of assuming such responsibility by taking out liability insurance. North Carolina is one of those states allowing this. It also waives the immunity up to the amount of the policy, but has not waived overall governmental immunity. School bus claims in North Carolina are exempted from the insurance and are paid

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[223]Ibid.

from the state school bus fund as defined by the North Carolina Tort Claims Act[224].

Negligence involves conduct by one person that falls below an established or acceptable standard which results in an injury to another person. The standard is a variable one; that is, negligence under one situation may not be under another. Courts must decide such cases on the basis of the factual situation against a general set of criteria. These criteria typically includes four questions: (1) Within the given situation, did one owe a standard of care, a duty, to another? That is, was the individual expected to supervise, maintain a safe environment, or give proper instruction? (2) Did one fail to exercise that standard of care or duty? That is, was the individual derelict in supervising, maintaining a safe environment, or in giving instructions? (3) Was there an accident in which a person was injured? Did one actually suffer some kind of loss or injury? (4) Was the failure to exercise due care the proximate (direct) cause of the injury? The cause of the injury must first be established; then it must be shown that there was some connection between it and one's failure to exercise due care.[225]

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[224]"Liability Insurance and Immunity," 115-C-42 North Carolina School Laws (1981): 31-32.

[225]H. C. Hudgins, Jr. and Richard S. Vacca, "Tort Liability," in Law and Education: Contemporary Issues and Court Decisions (Charlottesville, Va.: The Michie Company, 1985), 78.

Another major category of torts is intentional interference. This category usually involves either assault and battery or defamation. There have been relatively few assault and battery cases in education, presumably because administrators and teachers have been given considerable discretion in the discipline of school children. Another category of intentional interference is defamation. Defamation includes two categories: slander and libel. Slander is a spoken word which defames or injures a person's reputation. For one to be successful in a slander suit, a malicious intent to injure must be proven. Libel involves an injury to a person through the medium of printed material.[226]

Through the years courts have made a distinction between the immunity of school boards as corporate entities and school board members as individuals. When board members act within the scope of their legislatively prescribed or implied authority, they are acting as a corporate body. As long as they act honestly and in good faith within their prescribed authority, they will not be held liable for an injury growing out of an error of judgement. Courts have reasoned that the rule otherwise would be to deprive a community of potentially valuable civic leadership. For example, a school district, allowing the city recreation department to use a safe

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[226]Ibid., 76-77.

gymnasium facility, was not liable for an injury to a student.[227]

In contrast to the corporate action of a board of education, board members have been successfully sued as individuals. It is only when the members of a board of education exceed their authority that they may be liable as individuals, or as a corporate body. In order to hold a member liable, it must be shown that he was motivated by malice, corrupt motive, or attempt to injure. Otherwise having considerable discretion, board members make many decisions involving judgement and are not subject to suit.[228]

### Litigation by Special Interest Groups

Local boards of education are often sued by special interest groups that seek remuneration because of unpopular board decisions. These groups are often unpredictable when action is taken to protest decisions made by a board. The usual behavioral pattern of these special interest groups is to attend one or more of the board meetings in mass in order to voice their displeasure, usually through an appointed spokesperson. If this approach does not work, verbal and written threats of legal action usually occur. Letters to the

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[227]Morris v. City of Jersey City, 432 A. 2d. 553 (N. J. Supr. 1981).

[228]Hudgins and Vacca, 82-83.

editors of newspapers, radio and television coverage, and word of mouth will often distort the facts as presented. The result is often loss of credibility for the school board.

The usual strategy in tort litigation is to name as defendants all parties who could possibly be held libel--the school district or school, teachers, administration, and others. For any of these parties, immunity is a formidable defense. Public school districts have traditionally had common-law, or sovereign governmental immunity. However, through the years, more and more states have abrogated or modified this immunity through court decisions, legislation, or constitutional amendment. As litigation has increased, some states have provided statutory immunity or have reestablished common-law immunity.[229] However, special interest groups have waged many attempts to erode the immunity of the local board of education. One such case involved the West Yadkin Concerned Citizens v. The Yadkin Board of Education.[230]

On July 2, 1985, the Yadkin County (NC) Board of Education passed a motion in open session approving the writing of a letter to the Yadkin County Board of Commissioners in support of a county bond referendum for the

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[229]"Tort Liability," Yearbook of School Law (Topeka, Kans.: National Organization of Legal Problems in Education, 1977), 80.

[230]Yadkin County Superior Court, CVS 10752-002 (1989).

system-wide improvement of school facilities in Yadkin County, and to request the support of the County Commissioners. The superintendent provided the board members, during a public meeting, with a copy of a letter sent to the commissioners about the proposed bond referendum.

Between November 4, 1985, and April 7, 1986, the commissioners approved arrangements for developing a bond referendum for the schools. A resolution was passed with the necessary findings of fact, and an application was submitted to the Local Government Commission relating to the proposed bonds for renovation and new construction of the county schools. In May, 1986, the Local Government Commission formally approved the application for a bond referendum in the amount of $6,500,000 for school facility improvement.

In July, 1986, the required legal notice of the order authorizing $6,500,000 school bond was published in the local paper, which met all legal requirements. A public hearing was later held, and the bond order was formally adopted. A referendum was set for September 16, 1986. On September 16, 1986, the bond referendum was approved by a county-wide 4 to 1 majority of voters in Yadkin County, and a 3 to 2 majority in the West Yadkin District.

On March 17, 1987, drawings were prepared for West Yadkin Elementary School which called for renovation of four (4) existing classrooms as opposed to replacement, as previously had been considered. Revisions to the proposed plan had been

presented to a West Yadkin school committee which consisted of the principal, teachers, and PTA president. The revisions were the result of the loss of a teaching position due to declining enrollment, community interest in retaining the original structure, a reassessment of the structural integrity of the 1939 building, and other factors. The revisions were approved by the committee.

On July 16, 1987, the Public School Construction Fund was established by the North Carolina General Assembly (Chapter 622, Section Laws, 1987), which specified that the funds could not be used for construction of administrative facilities. That law also required the State Board of Education to adopt interim minimum facility standards, effective October 1, 1987, to be used by the Commission on Critical School Facility Needs in making its preliminary report on critical school facility needs for each county. The law required the State Board to adopt final minimum required facility standards on or before June 1, 1988. These standards were to be applicable only to plans submitted after the new standards were approved.

In August, 1987 the Yadkin County Board of Commissioners notified the Yadkin County Board of Education that the office space they occupied at the county courthouse would have to be vacated, and that the Yadkin County Board of Education offices would need to be relocated. That same year, officials from the State Department of Public Instruction's (S.D.P.I.) School

Planning division met with the Yadkin County superintendent and assistant superintendent to find a way to use available state matching funds in order to maximize funds available for construction needs. The New "Public School Building Capital Fund" would provide three-to-one matching funds. These funds, however, could not be used for construction of an administration building. The S.D.P.I suggested consideration be given to using $620,504 from bond proceeds and substituting the bond funds with state money; as long as the bond resolution would permit such use of bond funds.

On January 4, 1988, the Board of Education unanimously voted to request the County Commissioners approve using the first-year's allotment from the public school capital fund to go toward the West Yadkin building project in order to secure the necessary matching funds. The amount supplanted from the bond issue could then go toward another building project. The board's Ten Year Capital Outlay Plan Tentative Priority List was later amended to include the West Yadkin building project. On February 29, 1988, formal approval was received from the County Commissioners to apply state building funds to the West Yadkin project in order to free bond funds for other school building needs. Additional plans and drawings of West Yadkin Elementary School were submitted to the S.D.P.I. on March 31, 1988. Then, on May 2, 1988, the Board of Education bid contracts for the West Yadkin school construction.

On June 1, 1988, the State Board of Education approved North Carolina Public School Facility Standards: A Guide for Planning New School Facilities and Evaluating Existing School Facilities, effective immediately to apply to initial plans for construction, reconstruction, enlargements, and innovations submitted to the state superintendent on or after July 1, 1988. The new facility standards were passed and became effective for new projects filed after June, 1988. The West Yadkin School plans had been submitted and approved well before this date.

At the June 9, 1988 Board of Education meeting, the board discussed and approved the site on Washington Street in Yadkinville for the proposed administration building. The commissioners had indicated to the administration that the site was available at no cost to the Board of Education. On July 11, 1988, the Board of Education voted to approve the use of the Washington Street site in downtown Yadkinville for a county administration building. The site was later declared surplus property by the county and was transferred to the Board of Education. Meanwhile an older 1935-era building was demolished at West Yadkin School. On September 6, 1988, a topography study was completed at West Yadkin.

On October 3, 1988, a joint meeting was held with the County Commissioners and school board members. Details of an application for $620,504 included $364,195 for unallocated funds for the 1987-88 year, and $256,309 for 1988-89. The

funds would be used to complete the West Yadkin Elementary school construction. The matching funds were to be provided out of the school bond. The board of commissioners voted unanimously to approve the application which was later signed by both boards. The State Office of Management and Budget approved funding in the amount of $620,504 from Public School Building Capital Funds for a new school administration building in Yadkin County.

The State Board of Education adopted revised Recommended Facility Standards which made the facility standards recommended rather than mandated. Also adopted was a policy regarding the monitoring of school facilities. On January 9, 1989, the Board of Education approved the drawings and advertisement for bids for the new administration building.

The action began to take effect on June 5, 1989, when a group calling themselves the West Yadkin Concerned Citizens spoke to the Board of Education, protesting the renovation of four classrooms as opposed to receiving five new classrooms. The board was invited to attend a meeting at West Yadkin School on June 20, 1989, to listen to concerns of the West Yadkin residents, and did so. From June 20 to June 26, 1989, various discussions were held among individual board members, commissioners, and key staff, seeking funding in the new budget (then being negotiated) to add four new classrooms at West Yadkin School.

On June 26, 1989, the Board of Education met and accepted the recommendation of the superintendent that the board work with the County Commissioners to begin construction of four new classrooms at West Yadkin School in the Spring of 1990, with a completion date to coincide as nearly as possible with the opening of the 1989-90 school year and to reschedule classes from the Wilson Building (built in 1975), if possible, and to adjust for space in that building. The fifth classroom was eliminated because of the loss of one teaching position and declining student enrollment.

The superintendent was informed by the Associate Superintendent of Auxiliary Services that standards then in existence were recommended standards which applied only to new construction. No deviation report would therefore be required on renovated facilities, only on new construction. On June 29, 1989, the superintendent was again informed by the State Department of Public Instruction that the process used by the board to make available local funds through the Public School Building Capital Fund was appropriate and met all legal requirements.

On July 23, 1989, the West Yadkin Concerned Citizens initiated a lawsuit by filing civil summons and Notice of Intent to File a Complaint.

On August 7, 1989, the Board of Education resolved to adopt the report of the superintendent and to approve changes in the bond construction project. The board resolved that the

County Commissioners be asked to find facts and approve the changes and modifications in the bond construction project as set out in the report and, further, to approve the reallocation of $620,504 from the general obligation bond to the Board of Education administrative offices and Yadkinville Elementary School, and that public school construction funds be substituted for the $620,504 as earlier approved at the October 3, 1988 commissioners meeting, and that the changes be ratified and adopted. Architects were also employed by the Board of Education.

The County Commissioners voted to make the necessary findings of fact and approved the reallocation of funds and modifications of the project. The commissioners also ratified and adopted prior modifications and changes made by the Board of Education. Included in the Summary of Changes was the decision to renovate rather than demolish the 1939 building following reinspection; a reduction of one classroom at West Yadkin due to declining enrollment; and use of general obligation bond funds to be replaced by matching funds from Public School Construction Funds, to building the administration office building due to a loss of space for administration offices.

On August 7, 1989, the West Yadkin Concerned Citizens filed their Delayed Service of Complaint against the Yadkin County Board of Education and County Commissioners.

An independent audit, which was reported to the Board of Education on August 14, 1989, showed no exceptions to the use of school board funds, that $1,428,308 "will have been spent" at West Yadkin School by September, 1989, and that approximately $1,670,000 "will have been spent when four classrooms are added in 1990." The original amount proposed to be spent at West Yadkin was $1,404,000. The commissioners and Board of Education recognized the need to revise the summary of specifications to Yadkin County Schools Capital Building Project as presented earlier based upon the final audit. The complete expenditure at West Yadkin was $1,670,000.

On October 5, 1989, the plaintiffs filed a Motion for Summary Judgement, claiming that they were entitled to judgment in that there was no genuine issue as to any material fact. On October 6, the commissioners filed their answer to the plaintiff's complaint. That same day, the Board of Education filed a Motion to Dismiss the complaint on behalf of the board and individual school board members, stating that the action failed to state a claim upon which relief could be granted.

A summary Judgment Motion hearing was held on December 20, 1989 by a Superior Court judge. The plaintiffs were denied motion for Summary Judgment. An order was entered to that effect on January 12, 1990, indicating the apparent existence of genuine issues of material fact. The judge also

denied a Motion to Require Defendant to Pay plaintiffs' Reasonable Expenses and Attorney's Fees, issued an order denying plaintiffs' motion to strike defendant's Notice of Deposition and Requests for Production of Documents, and issued an offer denying plaintiff's attorney's fees and expenses for discovery matters. Additionally, the judge denied the plaintiffs' Objection to Defendants' Counter Affidavits and signed an order to that effect on January 12, 1990. The judge also granted the defendant's Motion to Dismiss the Complaint of the plaintiffs' against the individual defendants, the board members, and entered an Order to that effect on January 12, 1990.

On January 10, 1990, the plaintiffs filed a Motion for Entry of Default against the Board of Education. On January 19, the board filed a Motion to Set Aside the Entry of Default. An answer to the plaintiffs' complaint was filed by the board on January 17.

On February 2, 1990, the judge entered an Order Setting Aside Plaintiffs' Entry of Default against the Board of Education and accepted the Answer of Defendant filed on January 17. The order was entered by the judge on February 9, 1990.

The Board of Education filed a Motion for Summary Judgment in favor of the board on February 12, 1990. The defendant's Officer of Judgment was filed on February 20.

Then, on March 12, the proposed Consent Judgment was submitted to the Court.

Finally, the lawsuit was settled on March 15, 1990 when the Consent Judgment was approved and signed by the Superior Court judge. Both the plaintiffs and the defendants were "losers" in this endeavor considering the amount of time and money spent versus the desired outcome of the case.

The previous case is only one example of intervention by special interest groups. However, boards should not be intimidated by these groups during the course of the decision-making process.

## North Carolina Court Decisions Affecting School Boards

There have been many cases heard by the North Carolina courts that have affected the decision-making processes of local school boards across the state. Although all such cases are too numerous to list, this section of the study will discuss some of the important, yet varied, issues and cases which have influenced school board policy making. Discussion will include implementation of the Fair Labor Standards Act (FLSA) and cases which focus on board immunity from tort liability, teacher rights, student rights, a superintendent's contract, board autonomy, and budgeting issues. The information will be presented in the above sequence.

Schools are bound by laws governing all aspects of their relationships with their employees. Federal anti-discrimination laws like Title VII of the Civil Rights Act of 1964 forbid consideration of race, sex, age, and other factors in making employment decisions. The United States Constitution prohibits public schools (and all other public employers) from withholding employment benefits because an employee exercises basic, protected rights like freedom of speech. State tenure laws like North Carolina's G.S. 115C-325 prescribe standards for employees.[231]

In November, 1985, before the U. S. Department of Labor began enforcing the Fair Labor Standards Act against schools and other public employers, Congress came to the rescue.[232] Most notably, it delayed the requirement of time-and-a-half overtime pay until April, 1986, and it added a provision allowing schools and other public employers to use, to a limited extent, compensatory time off at the rate of 1 1/2 hours off for each overtime hour worked rather than pay time-an-a-half in wages.[233] Teachers are considered to be exempt from the Fair Labor Standards Act provision for overtime by virtue of their status as professional educators. Other

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[231]Robert P. Joyce, "Schools and the Fair Labor Standards Act," School Law Bulletin (Chapel Hill, N. C., Institute of Government, Winter, 1986), 1.

[232]Ibid.

[233]Ibid., 2.

employers may not be considered exempt for their salaries and number of hours worked are below certain minimum established by the Fair Labor Standards Act.

The Equal Pay Act has applied to schools since 1966. Within the framework of the Act, schools must pay employees no less than the standard minimum wage provision as established by the Fair Labor Standards Act. If schools employ students, they must get a certificate from the U. S. Department of Labor. Strict record-keeping requirements apply. Schools must comply with the child-labor provision of the Fair Labor Standards Act. Moreover, schools must not pay men and women at different rates of pay for substantially equal work. . Schools must not discriminate in employment against persons between 40 and 70 on the basis of age. The Age Discrimination Employment Act of 1967 added this provision to the Fair Labor Standards Act. Like the Equal Pay Act, the Age Discrimination Act has applied to schools since that time. The Fair Labor Standards Act does not require schools to give vacation, holiday, severance, or sick pay (state law addresses these issues for schools); it does not mandate meal or rest periods, holidays off, or vacations off (state law again); it does not require notice of discharges or the giving of reasons for discharge; it does not apply to pay raises or fringe benefits; and, except for special rules relating to minors and student

workers, it does not limit the number of hours that an employee can be required to work.[234]

As previously mentioned, boards of education are often entitled to a so-called "cloak of immunity" from litigation regarding tort liability. School boards within North Carolina (as well as some other states) are protected from liability from negligent acts by the courts due to this immunity.

The concept of sovereign immunity is founded on the ancient principle that "the King can do no wrong," and bars holding the government or its political subdivisions liable for the torts of its officers or agents unless such immunity is expressly waived by statute or by necessary inferences from legislative enactment.[235]

An early nonschool case addressing this issue was ruled on by the Supreme Court of North Carolina in the 1945 Miller v. Jones.[236] During the suit, the school board contended that immunity from liability for school boards exists due to the sovereign status on the performance of a governmental function, but does not exist for teachers. The court ruled in favor of the Board of Education.

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[234]Ibid., 5.

[235]Black, 497.

[236]Miller v Jones, 224 NC 783, 32 S. E. 2nd 594 (1945).

Similarly, the 1968 Crabbe v. County School Board of North Cumberland County,[237] and the 1975 Salyers v. Burkhart[238] focus on immunity as the key issue. In both cases, the state Supreme Courts found school boards to be immune from liability, but not the teachers who tried to use this as a defense.[239] In Beatty v. Charlotte-Mecklenburg Board of Education[240], the N. C. Court of Appeals held that the board had not waived its liability immunity under its self-risk insurance program. An eleven-year-old student, in crossing a busy four-lane highway to get to his school bus stop, was struck by a truck. He suffered serious injuries that resulted in permanent disability. The student's mother sued, claiming the board was negligent in its design of the school bus route and stop location. The trial court dismissed the claim on the basis of governmental immunity. The Court of Appeals affirmed the trial court ruling. The Court first noted that under G.S. Section 115C-42 a school board is permitted to waive its immunity by securing liability insurance. The Court then reviewed the Board's coverage. While the Charlotte-Mecklenburg School Board's general liability coverage was provided by a self-funded risk program,

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[237]164 S. E. 2nd 639 (Va. 1968).

[238]339 N. E. 2nd 652 (Ohio, 1975).

[239]"Tort Liability," 3.

[240]N. C. App., 394 S. E. 2d 242 (1990).

the board stipulated the risk program provided the same coverage as that covered by its previous policy with a commercial company.[241]

The Beatty decision reaffirms North Carolina's strict construction of a statute that affects governmental agencies' waiver of immunity. Also, the decision clearly indicated that if a school board decides to waive immunity through self-risk insurance program, it should stipulate the waiver as only to the extent afforded by a specific insurance policy or adopt a similarly detailed document.[242]

Over the years, most school systems have grown in size and operating complexity. This has often meant an increase in the number of teachers hired within these respective systems. The issue of teacher rights has also increased in complexity due to the level of competition for these jobs, personal beliefs, and professional conduct.

For example, in Campbell v. Board of Education of the Catawba County School Administrative Unit,[243] the Catawba County School System hired Campbell as an interim music teacher while the regular teacher was on maternity leave. Before Campbell's contract expired, the teacher resigned. Campbell applied for the position but was not hired. She

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[241]Breezer, 31.

[242]Ibid.

[243]76 N.C. App. 495, 333 S.E. 2d. 507 (1985).

claimed that the Board of Education violated G.S. 115C-325 (m) (2) because it did not rehire her for arbitrary, capricious, and personal reasons. Campbell alleged that the direction of cultural arts tortiously interfered with her freedom to contract. The court granted the board's motion for summary and Campbell appealed.[244]

The North Carolina Court of Appeals affirmed the summary judgment (Summary judgment is appropriate when there is not genuine issue of material fact and one party is entitled to prevail in the suit as a matter of law). In affirming the summary judgment on the claim of tortious interference with freedom to contract, the court stated that Campbell submitted no evidence sufficient to rebut the defendant's affidavits that the cultural arts director had no part in the hiring process or decision. Without involvement in the hiring process, tortious interference in that process is impossible. Also, the court found that "temporary personnel" are not within the definition of "probationary teacher."[245]

A teacher who expresses job-related concerns shared by other employees may also be expressing only personal interests when he does not act as a representative of those other employees. In Gregory v. Durham County Board of

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[244]Id.

[245]Id.

Education,[246] an elementary school teacher filed a grievance and wrote a protest to her superintendent about the scheduling of training sessions during vacation time. Although twenty other teachers shared her complaint, she urged the school to change its schedule simply because of her own vacation plans. Her speech was "quintessential" personal.[247]

A 1986 teacher rights case involved Crump v. Board of Education, Hickory Administrative Unit,[248] in which a career-status driver's education teacher and coach was dismissed in June, 1984 on grounds of immorality and insubordination. The board based its decision on a series of events beginning in 1981, when a female student complained to the principal about Crump's conduct and personal comments during the first day of road work in her driver's education class. When confronted with the student's letter of complaint, Crump denied the allegations. Crump was given a letter by the principal outlining instructions regarding his job, and stated that "failure to cooperate with these instructions could be interpreted as insubordination and neglect of duty." The letter had no expiration date. Crump drove alone with a female student in the summer of 1982 and in the fall of 1983 on an occasion when the other assigned driver

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[246]591 F. Supp. 145 I.M.D. N.C. (1984).

[247]Id.

[248]79 N. C. App. 372, 339 S.W. 2d 483 (1986).

was absent. Although the principal had not made arrangements for the situation when there was only one student driver, Crump never asked the principal what he should do in that situation or whether the restriction was still effective. The Superior Court upheld the dismissal, and Crump appealed.[249]

The North Carolina Court of Appeals affirmed the Superior Court's decision because Crump's dismissal was supported by substantial evidence under the "whole record" standard of review explained in Thompson v. Wake County Board Education, 292 N. C. 406, 233 S. E. 2d 538 (1977). Under this standard, the court must consider not only the evidence that in and of itself justified the board's decision, but also contradictory evidence or evidence from which conflicting inferences could be drawn. However, the court may not substitute its judgment for the board's when there are two reasonable conflicting views of the evidence. G.S. 115C-325 (e) (1) (c) provides that a career teacher may be dismissed for insubordination, which the court defined as "a willful disregard of express or implied directions of the employer and a refusal to obey reasonable orders." The board's conclusion that the principal's instructions to Crump were reasonable and that Crump's refusal to follow these directions was willful and

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[249]Id.

constituted insubordination was supported by substantial evidence in the record.[250]

Because of their multifaceted rules as administrators, investigators, and adjudicators, school boards are vested with a presumption that their actions are correct, and the burden is on the contestant to prove otherwise according to N.C.G.S. 115C-44. This was held in the 1990 Supreme Court case of Crump v. Board of Education of Hickory Administrative School Unit[251] (often referred to as Crump II) which originated out of the 1986 Court of Appeals case. The case was still in litigation during the latter part of 1992.

Several student rights cases have been litigated by the courts. Many of these cases have resulted from the adoption of school board policies within the various school districts across North Carolina.

For example, in September, 1984, the Buncombe County Board of Education adopted a new policy that prohibited students' use and possession of tobacco products on school property. The board's stated reasons for the policy were that use of tobacco products presents health and safety hazards and possession encourages use. Disciplinary procedures for violations of the policy were the responsibility of individual school principals. Students at Owen High School were told

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[250]Id.

[251]392 S.E. 2d. 579, 326 N.C. 603 (1990).

that punishments for violations ranged from a three-day "in-school" suspension for a first offense to a complete expulsion for a fifth offense. Kim Craig, a student who had been smoking at school with parental permission, was repeatedly suspended but continued to violate the policy. When the Board of Education upheld another suspension, Craig and another student who had also been suspended sued both the board and the principal. In Craig v. Buncombe County Board of Education[252] the Superior Court granted summary judgment for the Board of Education, and the students appealed.

The North Carolina Court of Appeals affirmed the decision, holding that the ban on the use and possession on tobacco products by the Board of Education was a valid exercise of the board's authority to adopt policies governing the conduct of students. The ban does not deprive students of their fundamental right to an education, since the only right denied them is the "right" to use or possess tobacco on school grounds. The students' youth and the goals of education justify regulating their conduct. The same principles do not apply for teachers who smoke in the lounge since they are adults.[253]

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[252]343 S.E. 2d 222 (N. C. App. 1986).

[253]Id., p. 233.

The 1964 student rights case regarding Reassignment of Hayes[254] involved a school board's attempt to transfer a high school girl who had taken Latin during her freshman year, who was a member of the school band, and who had generally received high grades. She expected to enroll in a college whose entrance requirement was a minimum of two units in each of two foreign languages or three units in Latin. The school to which the girl was assigned for her sophomore year had no course in Latin, nor did it have a band. Statutes provided that after a certain procedure for assigning students was completed, reassignment could be made by the board after a hearing at which it was found that the best interest of the child would be served by the reassignment, and that the reassignment would not interfere with the proper administration of the school. When the board, after the hearing, refused to reassign the girl to the original school, the parents sought relief in the courts.[255]

The State Supreme Court, observing that the statute placed all emphasis on the welfare of the child and the effect upon the school to which reassignment was requested, ordered her reassigned.[256]

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[254]261 N. C. 616, 135 S.E. 2d 645 (1964).

[255]Id.

[256]Id.

In yet another student rights case, the 1980 Sneed v. Greensboro City Board of Education[257] upheld the charging of "modest, reasonable fees" for the purchase of supplementary supplies and materials for use by or on behalf of students whose parents were "financially able to pay." The Court required that local boards give notice of procedures by which parents may confidentially apply for waivers or reduction of the fees.[258]

Another example of board involvement in student rights cases may be noted in McEachin v. Wake County Board of Education,[259] where evidence supported the findings that the actions of a student school bus driver's attacker, while the bus was parked with the engine running and emergency brake on in front of the school, was the sole proximate cause of a pedestrian's injuries. The attacker, an acquaintance of the bus driver, ran on to the bus and began to hit the driver. In doing so, the attacker accidently released the emergency brake allowing the bus to roll forward, pinning a pedestrian between two buses. The court held that the driver did not have the last clear chance to avoid the accident, thus justifying the conclusion that the driver exercised due cause in the

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[257]299 N. C. 609, 264 S.E. 2d 106 (1980).

[258]Id.

[259]403 S.E. 2d. 573 (1989), 378 N.C. 572 (1989).

operation of the bus for the purposes of a claim against the Board of Education under the North Carolina Tort Claims Act.

The decision to renew or not renew the superintendent's contract can sometimes be difficult for a Board of Education. Unfortunately, circumstances often occur which lead to the dissolution of the professional relationship that should exist between a superintendent of schools and the Board of Education. There are many superintendency turnovers each year in North Carolina and across the United States.

An example of this is the 1989 case of Rivenbark v. Pender County Board of Education[260] which involved the renewal of the superintendent's contract, which was to expire in June, 1988. The General Statutes at that time provided that the board may not act until after any new members had been sworn into office, even though two of the board members' terms of office were scheduled to expire in December, 1988. In light of the 1989 amendment clarifying legislative intent so as to indicate the new provisions of the amendment, new board members are to be elected or appointed and sworn in during the final twelve months of the superintendent's contractual agreement. The new board members must be sworn in prior to that time according to N.C.G.S. 115C-271.

Fortunately, the aforementioned case did not involve the termination of the superintendent, but did contribute to the

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[260]381 S.E. 2d 183 (1989), 94 N.C. App. 783 (1989).

development of a legislative amendment which will hopefully strengthen the professional relationship that should exist between the board and the superintendent. The by-product of such a strengthened relationship should produce a lower turnover rate among superintendents.

School board autonomy, or a board's right to its own self-governance, continued to be a highly controversial topic in North Carolina as a result of the 1990 State v. Whittle Communications.[261] Since the case was one of the more highly publicized and controversial cases regarding local school board autonomy, the State Supreme Court found that a contract between a local school board and the developer of a 12-minute current affairs program designed for use in the schools did not violate the provisions of the North Carolina Constitution. The argument was based primarily on Article 9, Section 2 (1) of the Constitution. By establishing a general and uniform system of "free public schools," the theory that students were required to spend their time if not their money in watching programs which contained approximately two minutes of commercial advertising was held invalid. The contracts signed by students and administrators clearly provided that students would not be required to watch the programs if they chose not to do so.

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[261]402 S.E. 2d. 556, 328 N.C. 456 (1990).

Each year a number of cases arise in which the basic authority of a Board of Education is challenged. Usually, it is the budget which becomes the focal point of the controversy, and sometimes the challengers become county commissioners. In the 1975 Wilson County Board of Education v. Wilson County Board of Commissioners,[262] a direct challenge over the county budget can be observed in two local government bodies. A state statute provides that county commissioners are authorized to review the school board's budget on a line-item basis. In this case, the issue was an increase in the superintendent's salary. The court held that this was subject to review by the County Commissioners. However, under North Carolina law, a board of education has the authority to determine when new buildings are needed and where they are to be located and does not need approval of county commissioners when there is a land exchange of equal value for such purposes.[263]

The previous cases are representative of the many situations that can confront boards of education. Present and future board members should use these as well as other cases from the past to enhance decision making.

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[262]215 S.E. 2d 412 (N.C. App. 1975).

[263]Painter v. Wake County Board of Education, 217 S.E. 2d. 650 (N.C. 1975).

## Significant U. S. Supreme Court Decisions Affecting School Boards

The modern-day operations of local school systems are complex, making it imperative that school board members have some developmental knowledge about school law. The following Supreme Court cases represent some of the more significant decisions affecting board policy and decision making. The cases are divided into sections involving student rights, discrimination, religion, teacher/employee rights, and rights of handicapped students. This section will focus on cases from 1940 to 1992. although a brief synopsis of other Supreme Court cases is offered for review in Appendix A.

### Student Rights

In 1940, the U. S. Supreme Court decided Minersville School District v. Gobitis[264]. The case centered around the issue of whether the requirement of students to salute the U. S. flag was constitutional. The case involved a group of Jehovah's Witnesses who claimed that saluting the flag was equivalent to worshipping an image contrary to fundamentals of their belief. The Supreme court held, by a vote of eight to one, that the flag salute could be required.[265] The Supreme Court decision that being required to participate in the flag

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[264]310 U. S. 586, 60 S. Ct. 1010, 84 L. Ed. 1375 (1940).

[265]Id.

ceremony was not a deprivation of the individual's constitutional right to religious freedom was widely and severely criticized.[266]

Three years later on June 14, 1943, the Supreme Court decided on West Virginia State Board of Education et al. v. Barnette et al.,[267] a case very similar in nature to Minersville. The action was taken by the State of West Virginia in an effort to make it compulsory for children in the public schools to salute the U. S. flag and recite the Pledge of Allegiance while extending the right arm, palm upward, similar to that of the Nazi salute during the World War II era.

Children who refused to comply with the so-called "expression of patriotism" were often expelled, and their absences from school were recorded as "unlawful" with expulsion noted as the reason of absence. Parents could be sentenced to a jail term not to exceed 30 days with a $50 fine as further punishment.

The Court, in finding for the defendant Barnette, ruled that those who refused compliance did so on religious grounds, and did not control the decision of the question; further, it was unnecessary to inquire into the sincerity of their views. Under the Federal Constitution, compulsion (to salute) was not

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[266]Id.

[267]318 U. S. 684.

a punishable means of achieving "national unity," and that a state government of limited powers need not be anemic government. The Fourteenth Amendment applies to the states, protects the citizens against the state itself and all of its creatures--boards of education not exempted.[268]

This case was a landmark decision in that it overturned the previous case of Minersville School District v. Gobitis as it relates to the First Amendment and students' rights.

Pursuant to a New Jersey statute authorizing district boards of education to make rules and contracts for the transportation of children to and from schools other than private schools operated for profit, a board of education by resolution authorized the reimbursement of parents for fares paid for the transportation by public carrier of children attending public and Catholic schools. The Catholic schools operated under the superintendency of a Catholic priest and, in addition to secular education, gave religious instruction in the Catholic faith. A district taxpayer challenged the validity under the Federal Constitution of the statute and resolution, so far as they authorized reimbursement to parents for the transportation of children attending sectarian schools. In Everson v. Board of Education of Ewing,[269] no question was raised as to whether the exclusion of private

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[268]Id.

[269]319 U. S. 624 (1943)

schools operated for profit demanded equal protection of the law; not did the record show that there were any children in the district who attended, or would have attended but for the cost of transportation, any but public or Catholic Schools.[270]

In the Everson v. Board of Education of Ewing case, the Supreme Court held that 1) the expenditure of tax-raised funds thus authorized was for a public purpose and did not violate the due process clause of the Fourteenth Amendment; 2) the statute and resolution did not violate the provisions of the First Amendment (made applicable to the states by the Fourteenth Amendment) prohibiting any "law respecting an establishment of religion."[271]

In another students' rights case in 1968, Tinker v. Des Moines Independent Community School District,[272] three public school pupils in Des Moines, Iowa, were suspended from school for wearing black armbands to protest the Government's policy in Vietnam. They sought nominal damages and an injunction against a regulation that the respondents had promulgated banning the wearing of armbands. The District court dismissed the complaint on the grounds that the regulation was within the board's power, despite the absence

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[270]319 U. S. 624 (1943).

[271]Id.

[272]393 U. S. 503 (1968).

of an finding of substantial interference with the conduct of school activities. The Court of Appeals affirmed by an equally divided court.[273]

In the Iowa case, the Supreme court held that in wearing armbands, the petitioners were quiet and passive. They were not disruptive and did not impinge on the rights of others. In these circumstances, their conduct was within the protection of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth. First Amendment rights are available to teachers and students, subject to application in light of the special characteristics of the school environment.[274]

In Gross v. Lopez,[275] public high school students who had been suspended from school for misconduct for up to 10 days without a hearing brought a class action suit against school officials, seeking a declaration that the Ohio statute permitting such suspensions was unconstitutional. The class action also sought an order enjoining the officials to remove the references in the suspensions from the students' records. A three-judge U. S. District Court declared that the students were denied due process of law in violation of the Fourteenth Amendment because they were "suspended" without hearing prior

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[273]Id.

[274]Id.

[275]419 U. S. 565 (1975).

to suspension or within a reasonable time thereafter," and that the statute and implementing regulations were unconstitutional, and granted the requested injunction.[276]

The Supreme Court held in the Goss v. Topeka case that students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment.[277]

Another case involving students' rights to due process was the case of Carey v. Piphus,[278] which involved actions by public school students under 41 U. S. C. Section 1983 against school officials, wherein the students were found to have been suspended from school without procedural due process; the students, absent proof of actual injury, were entitled to recover only nominal damages. The basic purpose of Section 1983 is to compensate persons for injuries by deprivation of constitutional rights.[279]

In Bethel School District No. 403 v. Fraser,[280] a public high school student delivered a speech nominating a fellow student for a student-elective office at a voluntary assembly that was held during school hours as part of a

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[276]Id.

[277]Id.

[278]435 U.S. 247 (1978).

[279]Id.

[280]478 U. S. 675 (1986).

school-sponsored educational program in self-government. The event was attended by approximately 600 students, all of whom were 14-year-olds. During the entire speech, the student referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor. Some of the students at the assembly hooted and yelled during the speech; some mimicked the sexual activities alluded to in the speech; and others appeared to be bewildered and embarrassed. The student giving the speech was later suspended by the administration for a violation of the school's "disruptive-conduct" rule. The student with his father as guardian ad litem then filed suit in Federal District Court, alleging a violation of his First Amendment right to freedom of speech and sought injunctive relief and damages under 42 U. S. C. Section 1983. The Court of Appeals affirmed the decisions.[281]

The Supreme Court held that the First Amendment did not prevent the School District from disciplining the student for giving the offensively lewd and indecent speech at the assembly. The Court also found that there was no merit to the student's contention that the circumstances of his suspension violated the process because he had no way of knowing that the delivery of the speech would subject him to disciplinary actions. The school disciplinary rule proscribing "obscene" language and the prespeech admonitions of teachers gave

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[281]Id.

adequate warning to the student that his lewd speech could subject him to sanctions.[282]

In New Jersey v. T. L. O.,[283] a teacher at a New Jersey high school, upon discovering a 14-year-old female freshman student and a female companion smoking cigarettes in a school lavatory in violation of a school rule, took them to the principal's office. They met with the assistant vice-principal for questioning. The 14-year-old student denied that she had been smoking and claimed that she did not smoke at all. The assistant vice-principal then demanded to see her purse. Upon opening the purse, he found a pack of cigarettes and also noticed a pack of rolling papers associated with the use of marijuana. Further search produced some marijuana, a pipe, plastic bags, a substantial amount of money, and a list of student's names who owed money to the respondent. Thereafter, the state brought delinquency charges against the student in Juvenile Court for possession of marijuana, which after denying her motion to suppress the evidence found, held that the Fourth Amendment applied to searches by school officials. The court determined that the search in question was a reasonable one, and adjudged the student to be a delinquent. The student appealed.[284]

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[282]Id.

[283]469 U. S. 325 (185).

[284]Id.

The U.S. Supreme Court held that the Fourth Amendment's prohibition of unreasonable searches and seizures applied to searches conducted by public school officials and was not limited to searches carried out by law enforcement officers. School officials were not exempt from the Amendment's dictates by virtue of the special nature of their authority over school children. In carrying out searches and other functions pursuant to disciplinary policies mandated by state statutes, school officials act as representatives of the State, not merely as surrogates for the parents of students, and they cannot claim the parents' immunity from the Fourteenth Amendment's strictures.[285] The student's appeal was denied.

**Discrimination**

Until the mid-1950s, the segregation of white and black children in the public schools of a state solely on the basis of race, pursuant to state laws which permitted such segregation, denied black children the equal protection of the laws guaranteed by the Fourteenth Amendment--even though the physical and other "tangible" factors of white and Negro schools may have been equal.

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[285]Id.

In the 1954 landmark decision Brown v. Board of Education of Topeka,[286] the U.S. Supreme Court held that the Fourteenth Amendment is inconclusive as to its intended effect on public education. The question presented in these cases must be determined, not on the basis of conditions existing when the Fourteenth Amendment was adopted, but in the light of the full development of public education and its present place in American life throughout the nation. Where a state has undertaken to provide an opportunity for an education in its public schools, such an opportunity is a right that must be made available to all on equal terms. Segregation of children in public schools solely on the basis of race deprives children of the minority group of equal educational opportunities, even though the physical facilities and other "tangible" factors may be equal. Finally, the "separate but equal" doctrine adopted in Plessy v. Feguson, 163 U. S. 537, has no place in the field of public education.[287]

In the 1963 Goss v. Board of Education of Knoxville, Tennessee,[288] Negro pupils and their parents sued in two federal district courts in Tennessee to desegregate racially segregated public schools. In each case, a desegregation plan submitted to the District Court by the school board provided

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[286]347 U.S. 483 (1954), 349 U.S. 294 (1955).

[287]Id.

[288]373 U. S. 603 (1963).

for the rezoning of school districts without reference to race; but each plan contained a transfer provision. The provision allowed any student, upon request, to be permitted, solely on the basis of his own race and the racial composition of the school to which he was assigned by virtue of rezoning, to transfer from such school, where he would be in the racial minority, back to his former segregated school, where his race would be in the majority. These plans were approved by the respective District courts and the Court of Appeals.[289]

The U.S. Supreme Court held that in so far as they approved such transfer provision, the judgment of the Court of Appeals would be reversed, since such transfer plans were based on racial factors which inevitably would lead toward segregation of students by race, contrary to the Court's admonition in Brown v. Board of Education, 349 U. S. 294.[290].

The busing of students in the public schools was addressed in the 1971 North Carolina State Board of Education v. Swann[291] which flatly forbade the assignment of any student on account of race or for the purpose of creating a racial balance or ratio in the schools and which prohibited busing for such purposes, was held invalid as preventing

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[289]Id.

[290]Id.

[291]402 U. S. 43 (1971).

implementation of desegregation plans required by the Fourteenth Amendment.[292]

In April 1969, the district ordered the Charlotte-Mecklenburg Board of Education to provide a plan for faculty and student desegregation as a result of a plan approved by the District Court in 1965 at the commencement of Green v. County School Board, 391 U. S. 403, which required school boards to "come forward with a plan that promises realistically to work. . . until it is clear that state-imposed segregation has been completely removed." The resulting case became Swann v. Charlotte-Mecklenburg Board of Education[293]. Finding the board's submission unsatisfactory, the District Court appointed an expert to submit a desegregation plan. In February 1970, the expert and the board presented plans, and the court adopted the board's plan, as modified, for the junior and senior high schools. The Court of Appeals affirmed the District Court's order on the faculty desegregation and the secondary school plans, but vacated the school district's plan for the elementary schools, fearing that the provisions for pairing and grouping of elementary schools would unreasonably burden the pupils and the board. The case was remanded to the district court for reconsideration and submission of further plans. On remand

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[292]Id.

[293]402 U. S. 1 (1971).

the district court received two new plans, and ordered the board to adopt a plan, or the expert's plan would remain in effect. After the board acquiesced to the expert's plan, the District Court directed that it remain in effect.[294]

The Supreme Court held that the objective was to eliminate from the public schools all vestiges of state-imposed segregation that were held violative of equal protection guarantees by Brown v. Board of Education, 347 U. S. 483 (1954). In default by the school authorities of their affirmative obligation to offer acceptable remedies, the district courts have broad power to fashion remedies that will assure unitary school systems. Title IV of the Civil Rights Act of 1964 does not restrict or withdraw from the federal courts their historical equitable remedial powers. The Constitution does not prohibit district courts from using their equity power to order assignment of teachers to achieve a particular degree of faculty desegregation.[295]

In the 1972 United States v. Scotland Neck City Board of Education,[296] a state statute authorized creation of a new school district for Scotland Neck, N. C., a city that was part of the larger Halifax county school district, then in the process of dismantling a dual school system. The District

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[294]Id.

[295]Id.

[296]407 U. S. 484 (1972).

Court in this litigation instituted by the United States enjoined implementation of the statute as creating a refuge for white students and promoting school segregation in the county. The Court of Appeals revised, ruling that the statute's impact on dismantling the county dual system was minimal and that it should not be regarded as an alternative desegregation plan for the county since it was enacted by the legislature and not by the school board.[297]

The Supreme Court held that whether the action affecting dismantling of a dual school system was initiated by the legislature or by the school board was immaterial in North Carolina Board of Education v. Swann, 402 U. S. 43; the criterion was whether the dismantling was furthered or hindered by creating a new school district from the larger district having the dual school system, and a proposal that would have impeded the dismantling process was enjoined.[298]

Another desegregation case was the 1977 Dayton Board of Education v. Brinkman[299]. The District Court, after an evidentiary hearing, held that the Dayton, Ohio school board had engaged in racial discrimination in the operation of the city's schools. On the basis of a "cumulative violation" of the Equal Protection Clause, the district court identified

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[297]Id.

[298]Id.

[299]433 U. S. 406 (1977).

three elements which contributed to its decision: (1) substantial racial imbalance in student enrollment patterns throughout the school system; (2) the use of optimal attendance zones allowing some white students to avoid attending predominately black schools; and (3) the school board's rescission in 1972 of resolutions passed by the previous board that had acknowledged responsibility in the creation of segregation racial patterns and had called for various types of remedial measures. The District Court, following reversals by the Court of Appeals of more limited remedies, ultimately formulated the Appellate Court's approved system-wide remedy.[300]

The U.S. Supreme Court held that the District Court's findings on constitutional violation did not suffice to justify the system-wide remedy. In view of the confusion at various stages in the case as to the applicable principles and appropriate relief, the case was remanded back to the District Court.[301]

Yet another discrimination case involved the 1969 Sailors v. Board of Education of Kent County,[302] a suit seeking to enjoin as violative of the Fourteenth Amendment enforcement of a Michigan statute under which the appellee school board and

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[300]Id.

[301]Id.

[302]387 U. S. 105 (1969).

other county school boards were chosen--not by the electors of the county, but by delegates from the local board of candidates nominated by school electors. A three-judge district court, rejecting Saliors' contention that the system parallel the county-unit system invalidated in Gray v. Sanders, 372 U. S. 368, dismissed the complaint.[303]

The Supreme Court held that a three-judge court was properly convened since the challenged statute was general and state-wide in application. Also, there was no constitutional reason why nonlegislative state or local officials may not be chosen otherwise then by elections. The functions of the school board were essentially administrative and the elective-appointive system used to select its members was well within the state's latitude in the selection of such officials.[304]

**Religion**

Religious freedom has been a controversial issue for thousands of years. It is the cornerstone of the foundation upon which the American educational system was built as evidenced by the Mayflower Compact. The same religious freedom has led to the development of several thousand forms of religion expressed by several million people in the United States alone. Therefore, conflict over how and what to teach

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[303]Id.

[304]Id.

is almost a certainty among the populace. The following discussions will focus on some of the religious conflicts that have affected boards of education.

Because of the prohibition of the First Amendment against the enactment of any law "respecting an establishment of religion," which is made applicable to the states by the Fourteenth Amendment, state officials may not compose an official state prayer and require that it be recited in the public schools of the state at the beginning of each school day--even if the prayer is denominationally neutral and pupils who wish to do so may remain silent or be excused from the room while prayer is being cited. This was so evidenced in the case of Engle v. Vitale.[305]

In Epperson v. Arkansas,[306] Epperson, an Arkansas public school teacher, brought this action for declaratory and injunctive relief challenging the constitutionality of Arkansas's "anti-evolution" statute. The statute made it unlawful for a teacher in any state-supported school or university to teach or to use a textbook that taught "that mankind ascended or descended from a lower order of animals." The State Chancery Court held the statute an abridgement of free speech violating the First and Fourteenth Amendments. The State Supreme court, expressing no opinion as to whether

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[305]370 U. S. 421 (1962).

[306]303 U. S. 97 (1968).

the statute prohibits "explanation" of the theory or only teaching that the theory is true, reversed the chancery court. In a two-sentence opinion it sustained the statute as within the State's power to specify the public school curriculum.[307]

The Supreme Court held that the statute violates the Fourteenth Amendment, which embraces the First Amendment's prohibition of state laws respecting an establishment of religion. The First Amendment mandates governmental neutrality between religion and non-religion.[308]

Because of the prohibition of the First Amendment against enactment by Congress of any law "respecting an establishment of religion," which is made applicable to the State by the Fourteenth Amendment, no state law or school board may require that passages from the Bible be read or that the Lord's Prayer be recited in the public schools of a state at the beginning of each school day--even if individuals are excused from attending or participating in such exercises upon written requests of their parents.[309] This is evidenced in School District of Abington Township v. Schempp.[310]

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[307]Id.

[308]Id.

[309]Id.

[310]374 U. S. 203.

**Teacher/Employee Rights**

In Adler v. Board of Education of New York,[311] the Civil Service Law of New York, Section 12-a, made ineligible for employment in any public school any member of any organization advocating the overthrow of the government by force, violence, or any unlawful means. Section 3022 of the Education Law, added by the Feinberg Law, required the Board of Regents 1) to adopt and enforce rules for the removal of any employee who violated, or was ineligible under Sec. 12-a, and 3) to provide in its rules that membership in any organization so listed was prima facie evidence of disqualification for employment in the public schools. No organization may be so listed, and no person severed from or denied employment, except after a hearing and subject to judicial review.[312]

The Supreme Court held that there was no constitutional infirmity in Section 12-a of the Civil Service Law of New York or in Section 3022 of the Education Law.[313]

The case of Keyishian et al. v. Board of Regents of the University of the State of New York et al.[314] involved forty

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[311]342 U. S. 485 (1952).

[312]Id.

[313]Id.

[314]385 U. S. 589.

members of the State University of New York and a nonfaculty employee who brought the action for declaratory and injunctive relief, claiming that New York's teacher loyalty laws and regulations were unconstitutional. Their continued employment had been terminated or was threatened when each appellant faculty member refused to comply with a requirement of the university trustees that he certify that he was not a Communist and that if he had ever been one he had to advise the university president. The nonfaculty member employee refused to state, under oath, whether he had advocated or been a member of a group which advocated the forceful overthrow of the government.

In making its decision, the Court considered many things. The Court had already determined in Adler that some aspects of the New York teacher loyalty plan (before its extension to state institutions of higher learning) were non-controlling. The vagueness issue presented in Adler had not been decided, and the validity of subversive organization membership for whatever reason was subsequently rejected by the Court.

The Court further determined that academic freedom was a special concern of the First Amendment, which does not tolerate laws that cast a "pall of orthodoxy" over the classroom. Also, the provisions of some of the laws which made Communist Party membership prima facie evidence of disqualification for employment in the public school system were "overboard" and unconstitutional.

The Court found that membership without a specific intent to further the unlawful actions of an organization is not a constitutionally adequate basis or reason for imposing sanctions. Therefore, the lower court's decision was reversed and remanded for further consideration.

In the 1968 Pickering v. Board of Education of Township High School District,[315] the Board of Education dismissed a teacher for writing and publishing in a newspaper a letter criticizing the board's allocation of school funds between educational and athletic programs and the board's and superintendent's methods of informing, or preventing the informing of, the school district's taxpayers of the real reasons why additional tax revenues were being sought for the schools. At a hearing the board charged that numerous statements unjustifiably impugned the board and school administration. The board found all the statements false as charged and concluded that publication of the letter was "detrimental to the efficient operation and administration of the schools of the district," and that the interests of the school required appellant's dismissal under the applicable statute. There was no evidence at the hearing as to the effect of Pickering's statements on community or school administration. The Illinois courts upheld the dismissal, rejecting the appellant's claim that the letter was protected

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[315]391 U. S. 563 (1968).

by the First and Fourteenth Amendments, on the ground that as a teacher "he had to refrain from making statements about the school's operation," which in the absence of such position, he would have an undoubted right to engage in.[316]

The Supreme Court held that "the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." The teacher's interest as a citizen in making public comment must be balanced against the state's interest, in promoting the efficiency of its employees' public services. Those statements of appellant's which were substantially correct regarded matters of public concern and presented no questions of faculty discipline or harmony; hence those statements afforded no proper basis for the board's action to dismiss the appellant. The comments that were made were essentially no different from those of the general public.[317]

The U.S. Supreme Court held that a school teacher could not be deprived of his First Amendment rights as a citizen just because he was employed by the school district.

In the 1975 Horton Joint School District No. 1 v. Hortonville Education Association,[318] an application for

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[316]Id.

[317]Id.

[318]423 U. S. 1301 (1975), 426 U. S. 482 (1976).

stay of Wisconsin Supreme Court judgment, holding on due process grounds that school boards may not properly dismiss teachers employed by it, was denied. It is not clear whether that judgment rested upon the Fourteenth Amendment alone or also upon the Wisconsin Constitution, and whether the judgment was "final" for purposes of 28 U. S. C. Section 1257.[319]

Another teacher case involved the Madison Joint School District No. 8 v Wisconsin Employment Relations Commission.[320] During the course of a regularly scheduled, open meeting of the Board of Education, public discussion turned to current pending labor negotiations between the board and the teachers' union. One speaker was a nonunion teacher who, over union objections, addressed one topic of the pending negotiations, namely, the union's demand for a "fair share" clause, which would require all teachers (whether union members or not) to pay union dues. He read a petition signed by the teachers in the district, calling for postponement of the issue until it could be given closer examination by an impartial committee. The Union subsequently filed a complaint with the Wisconsin Employment Relations Commission (WERC), claiming that the board had committed a prohibited labor practice in violation of Wisconsin law by permitting the nonunion teacher to speak at its public meeting because that

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[319]Id.

[320]429 U. S. 167 (1976).

constituted negotiations by the board with a member of the bargaining unit other than the collective bargaining representative. The WERC decision was upheld on appeal. The Wisconsin Supreme Court concluded that the nonunion teacher's statement before the board constituted "negotiation" with the board, and held that abridgement of speech by the WERC was justified in order to "avoid the dangers attendant upon relative chaos in labor management relations.[321]

The Supreme Court held that circumstances did not present such danger to labor-management relations as to justify curtailing speech in the manner ordered by the WERC.[322]

Another teacher/employee rights cased involved the 1980 Dougherty County Board of Education v. White.[323] Shortly after a black employee of the Dougherty County, Georgia Board of Education announced his candidacy for the Georgia House of Representatives, the board adopted a requirement (Rule 58) that its employees take unpaid leaves of absence while campaigning for elective political office. As a consequence of Rule 58, the employee, who sought election to the Georgia House on three occasions, was forced to take leave and lost over $11,000 in salary. When compelled to take this third leave of absence, he brought an action in District Court,

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[321]Id.

[322]Id.

[323]439 U. S. 32 (1978).

alleging that Rule 58 was unenforceable because it had not been precleared under Section 5 of the Voting Rights Act of 1965. Concluding that Rule 58 had the "potential for discrimination," the District Court enjoined its enforcement pending compliance with Section 5.[324]

The Supreme Court held that Rule 58 is a "standard practice, or procedure with respect to voting" within the meaning on Section 5 of the Act. A county school board, although it does not itself conduct elections, is a political subdivision within the purview of the Act when it exercised control over the electoral process.[325]

In Jett v. Dallas Independent School District,[326] Jett, a white male, was employed by the Dallas Independent School District (DISD) as a teacher, athletic director, and head football coach at a predominately black high school. After repeated clashes with the school's black principal over school policies and the football program, the principal recommended that Jett be relieved of his duties as athletic director and coach. The superintendent affirmed the principal's recommendation and reassigned Jett to a teaching position in another school with no coaching duties. Alleging discrimination based on violation of 42 U. S. C. Sections 1981

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[324]Id.

[325]Id.

[326]109 S. Ct. 2702 (1989).

and 1983 and the Equal Protection Clause, Jett filed suit, which was upheld on all counts. The appellate court reversed part of the decision, and remanded, finding, among other things, that the District Court's jury instructions as to the DISD's liability under Section 1983 were deficient, since (1) they did not make clear that such liability could be predicated on the actions of the principal or the superintendent only if those officials had been delegated policy-making authority or acted pursuant to a well settled custom that represented official policy; and (2) even if the superintendent could be a policy maker for purposes of transfer of personnel, the jury made no finding that his decision to transfer Jett was either improperly motivated or consciously indifferent to the improper motivations of the principal.[327]

The Supreme Court held that the judgment was affirmed in part, and the case was remanded to the lower courts.[328]

Several noncertified personnel are employed by school districts every year. Boards of education should familiarize themselves with noncertified employee rights as well as certified personnel.

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[327]Id.

[328]Id.

In the 1985 Cleveland Board of Education v. Loudermilk,[329] the city school board in Cleveland, Ohio hired Loudermilk as a security guard. On his job application Loudermilk stated that he had never been convicted of a felony. Subsequently, upon discovering that he had in fact been convicted of grand larceny, the board dismissed him for dishonesty in filling out the job application. He was not afforded an opportunity to respond to the dishonesty charge or to challenge the dismissal. Under Ohio law, Loudermilk was a "classified civil servant," and by statute, as such an employee, could be terminated only for cause and was entitled to administrative review of the dismissal. He filed an appeal with the Civil Service Commission, which, after hearings before a referee and the Commission, upheld the dismissal some nine months after the appeal had been filed. Loudermilk then filed suit in District court, alleging that the Ohio Statute providing for administrative review was unconstitutional.[330]

The Supreme Court held that all the process that is due is provided by a pretermination opportunity to respond, coupled with past termination administrative procedures as provided by the Ohio State statute; since the respondents alleged that they had no chance to respond, the district court

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[329]480 U. S. 532 (1985).

[330]Id.

erred in dismissing their complaints for failure to state a claim.[331]

**Handicapped Students**

Every school district in America should ensure that the special needs of handicapped students are met. Federal laws require that school districts place their children with special needs in the least restrictive learning environment possible. School boards should familiarize themselves with these federal mandates in order to avoid litigation. The following cases were heard by the U.S. Supreme Court as a result of improper school board decisionmaking.

In the 1984 Irving Independent School District v. Tatro,[332] the parent's of an eight-year-old girl with a defect known as spina bifida filed a suit as a result of the school's inappropriate treatment of their daughter. She suffered from orthopedic and speech impairments and a neurogenic bladder, which prevented her from emptying her bladder voluntarily. Consequently, she had to be catheterized every three or four hours to avoid injury to her kidneys. To accomplish this, a procedure known as clean intermittent catheterization (CIC) was prescribed. The procedure was

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[331] Id.

[332] 468 U. S. 883 (1984).

simple and could be performed in a few minutes by a lay person with less than an hour's training.

Pursuant to the Education of the Handicapped Act, school officials developed an individualized education program for the child, but made no provisions for school personnel to administer CIC. After unsuccessfully pursuing administrative remedies to secure CIC services for the child during school hours, respondents brought action against petitioner and others in Federal District court, seeking injunctive relief, damages, and attorney's fees. Respondents invoked the Education of Handicapped Act, arguing that CIC is one of the "related services" included under the statutory definition, and also invoked Section 504 of the Rehabilitation act of 1973, which forbids a person, by reason of a handicap, to be "excluded from the participation in, be denied the benefits of, or be subjected to discrimination under" any program receiving federal aid.

After its initial denial of relief was reversed by the Court of Appeals, the district court, on remand, held that CIC was a "related service" under the Education of the Handicapped Act, ordered that the child's education program be modified to include provision of CIC during school hours, and awarded compensatory damages against petitioners. The court further held that respondents had proved a violation of Section 504 of

the Rehabilitation Act, and awarded attorney's fees to respondents under Section 505 of that Act.[333]

The Supreme Court held that CIC is a "related service" under the Education of the Handicapped Act. Section 504 of the Rehabilitation Act to remedy a denial of education services, and therefore these respondents were not entitled to any relief under Section 504, including recovery of attorney's fees.[334]

As determined by the 1985 findings in Burlington School Committee v. Department of Education of Massachusetts,[335] the Education of the Handicapped Act requires participating state and local education agencies to assure that handicapped children and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education for such children. These procedures include the parents' right to participate in the development of an "individualized education program" (IEP) for the child and to challenge administrative and court proceedings as proposed in the IEP with which they disagree. The case involved a father's rejection of the petitioner's town's proposed IEP, and calling for the child's placement in a certain public

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[333]Id.

[334]Id.

[335]471 U. S. 359 (1985).

school with review by the respondent Massachusetts Department of Education's Bureau of Special Education Appeals (BSEA).

Meanwhile, the father, at his own expense, enrolled the child in a state-approved private school for special education. Ultimately, after the town had agreed to pay for the child's private school placement for the 1979-80 school year but refused to reimburse the father for the 1979-80 school year as ordered by the BSEA, the court overturned the BSEA's decision, holding that the appropriate 1979-1980 placement was one proposed in the IEP and that the town was not responsible for the costs at the private school for the year 1979-1980 through 1981-1982 years.[336]

The Supreme Court held that the grant of authority to a reviewing court under Section 1415(e)(2) includes the power to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determines that such placement, rather than a proposed IEP, is proper under the Act. A parental violation of Section 1415(e)(3) by changing the "then current educational placement" of their child during the proceedings to review a challenged proposed IEP does not constitute a waiver of the parents' right to reimbursement for expense of the private placement.[337]

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[336]Id.

[337]Id.

As specified in the 1987 School Board of Nassau County v. Arline,[338] Section 504 of the Rehabilitation Act of 1973, 29 U. S. C. Section 794 (Act), provides that no "otherwise qualified handicapped individual," as defined in 29 U. S. C. Section 706(7), shall, solely by reason of his handicap, be excluded from participation in any program receiving federal financial assistance.[339]

The U.S. Supreme Court held that a person afflicted with the contagious disease of tuberculosis may be a "handicapped individual" within the meaning of Section 504.[340]

**School Financing**

In the past two decades, various citizens and pro-education groups, alarmed at the existence of wide disparities in the amount of money available to local school districts, have challenged the constitutionality of the state's school finance systems. Originally, these challenges centered on the federal equal protection clause, but use of the Federal Constitution was foreclosed by the Supreme Court's 1973 decision in San Antonio Independent School District v. Rodriguez.[341] The U. S. Supreme Court ruled against the

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[338]480 U. S. 273 (1987).

[339]Id.

[340]Id.

[341]411 U.S. 1, 35 (1972).

Mexican-American parents from Texas. In reaching its decision, the court relied upon two important legal principles. First, the court said that the U.S. Constitution does not guarantee the right to an education, as it does to rights such as free speech and privacy. Second, the court said that the Texas school finance system did not violate the equal protection clause of the 14th Amendment. It conceded that the system was imperfect. But it refused to become involved because "direct control over decisions concerning the education of one's children is a need that is strongly felt in our society.[342]

In the case of Bell v. New Jersey and Pennsylvania,[343] several states received funds as part of the federal grant-in-aid program under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), a program designed to improve the educational opportunities available to disadvantaged children. Subsequently, federal auditors determined that each state had misapplied the funds. The Education Appeal Board while modifying the auditor's findings, assessed deficiencies against both states. The Secretary of Education declined to review the order establishing the deficiencies, and, after a period of comment, the orders became final. Both states filed petitions for review in the Court of Appeals, which

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[342]Id., p. 49.

[343]461 U. S. 773 (1983).

consolidated the cases and held that the Department of Education did not have the authority to issue the orders.[344]

The Supreme court held that the Court of Appeals had jurisdiction of the cases under both Section 195 of ESEA, which permitted judicial review in the Court of Appeals of the Secretary's final action with respect to audits, and Section 455 of the General Education Provision Act (GEPA), which permits such review of actions of the board. The provisions of Section 207(a)(I) of ESEA and Section 415 of GEPA, which required payments of federal grants to states under ESEA to take into account or make adjustments for any overpayment or underpayment in previous grants. The periods in which the audits were conducted gave the government the right to recover misused funds granted to a state under Title I of ESEA. Imposition of liability for misused funds does not interfere with state sovereignty in violation of the Tenth Amendment.[345] Also, in Serrano v. Priest,[346] the California Supreme Court ruled that the reliance on local property taxes to fund California school systems violated the federal constitution. After 1972, state courts became the arena for addressing the extent of constitutional guarantees of equal funding in education. State courts have found that

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[344]Id.

[345]Id.

[346]5 CA. 3d. 584 (1971); 18 CA. 3d. 728 (1976).

funding disparities in school finance systems violated state constitutions. Most successful suits have had two factors in their favor. First, they have been brought on the basis of state equal protection clauses or state education clauses, which 49 states have. The applicable provisions in the North Carolina Constitution reads: "The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools . . . " (Article IX, Section 2). It is comparable with the education provisions in other state constitutions, some of which require "thorough," "efficient," "suitable," or "adequate" systems of free public schools.

In Horton v. Meskill,[347] the Connecticut Supreme Court found that the state's school finance system violated the state constitution's equal protection clause. The court said that state constitutional equal protection provisions, while substantially equivalent to the federal equal protection clause, possess an independent vitality. It found unconstitutional the Connecticut school finance system, which depends primarily on the local tax base without regard to the ability of towns to finance an educational program.

The major reason for sustaining inequitable financing schemes has been the preservation of local control. For example, the Ohio Supreme Court found local control to be a rational basis for upholding Ohio's system of financing

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[347]172 Conn. 615, 376 A2d. 359 (1977).

elementary and secondary education. The Ohio court said that "by local control, we mean not only the freedom to devote more money to the education of one's children but also control over participation in the decision-making process as to how these local tax dollars are to be spent".[348]

In the 1991 The Coalition for Equitable School Funding v. State of Oregon,[349] a group of citizens challenged the state system of funding for public schools claiming that funds were not evenly distributed to all school districts. The Oregon Supreme Court said that "assuming there are alternative systems of financing education which would eliminate some of the inequalities in the present system and retain and enhance local control, the present system of financing to be less than valid."[350]

In cases where state supreme courts have struck down school finance systems, most have ordered the state legislature to find a solution, subject to judicial review. Some have ordered the legislature to define the educational opportunity mandated by the state constitution.

Recently, some interest has been expressed in authorizing school boards to have tax-levying authority. There are arguments for and against this issue, but it will be up to the

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[348]Board of Education of the City School District of Cincinnati v. Walter, 390 NE 2d. 813, at 820.

[349]311 OR. 300, 811 P. 2d. 116 (1991).

[350]Id.

state legislature to determine the practicality of tax levying by local boards. Presently, there are twenty-nine states that allow their local school boards this fiscal independence. School boards in fourteen states are fiscally dependent. Both fiscally dependent and fiscally independent school districts exist in seven states.

Proponents of fiscal independence contend that it assures fiscal responsibility. It retains education as a state function, with school board responsibility belonging to the state and not to the county government. Also, competition is theoretically lessened among governmental agencies for the tax dollar.

Supporters of fiscal dependence argue that fiscally dependent districts have greater access to nonproperty tax revenue. There tends to be greater coordination of the services of all government agencies that depend on property-tax revenues. There tends to be a greater emphasis on the school's responsibility to local rather than state government. Futhermore, candidates for school board elections tend to be more interested in a strong school system than in fiscal constraints.

Feasibility studies could be done by the state legislature to determine the need of tax levying by local school boards.

## Summary

Traditionally, courts have been reluctant to second-guess school authorities and their evaluation of a teacher's competence. More often than not, judges first confine their review to procedural matters by ensuring that all channels were properly followed. Then, they ascertain if the board's action was supported by sufficient evidence and whether the members' action was arbitrary or capricious.[351]

The focus on the school board as a collective growing body can be examined by gaining a greater understanding of the board's responsibility. Thus, an active, positive feature of responsibility is the factor of accountability. Elected officials are expected to be accountable to their constituents; there are also governmental checks and balances, and judicial and administrative review. The more general meaning of accountability (in contrast to its form in education) is to entrust something to someone and to call upon that person to render an account of how that trust has been executed. To act responsibly may mean to comply with duties, but in many cases it also involves much more than this. One needs to understand the moral features of an act in order to

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[351]Hudgins and Vacca, 99.

act responsibly. Those whose acts are usually responsible are characterized as responsible persons.[352]

Accountability is a place to judge schools by their outputs and to demonstrate a positive relationship between expenditures and desired results obtained.[353] Schools are expected to make wise use of public resources not only by efficient cost accounting procedures but also by raising test scores and overcoming students' lack of discipline and good habits.

A school board may seek to exonerate itself to avoid the charge of "irresponsibility" by employing one or more of the following tactics: claim compulsion, ignorance, unintentional agency, redefining an act, disputing consequences, disputing responsibility, or questioning evaluation. A school board could claim that its act was compelled by state law, and whatever the opinion of the individual school board members about the merits of the particular law, they have no choice but to comply with it. Of course, the board could defy the law and suffer the penalties; however, an oath of office to uphold the law would be compelling.[354]

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[352]John Martin Rich, "The Responsibility of Local School Boards," in Urban Education (Buffalo, N. Y.: University of Buffalo, 1988), 4.

[353]L. M. Lessinger, Every Kid A Winner: Accountability In Education (New York: Simon and Shuster, 1970).

[354]Rich, 8.

School board members may be accused of irresponsible acts when they perform undesirable acts or fail to perform a desirable act that is obligatory; yet they still have available a number of excuse-making conditions that can be advanced in their defense for either complete exoneration or mitigation of the charges. Many acts are judged either responsible or not responsible; still others that are moot may or may not be judged irresponsible, depending upon the outcome of the hearings.[355]

Actions by local school boards and school officials must be examined carefully when trying to determine accountability. The two most reliable indicators of accountability have been and will continue to be the courts and the general public.

Individuals who serve on local school boards must be kept informed about the laws which govern the process. Immunity from liability for public officials has been significantly challenged as evidenced in some of the cases previously mentioned. Since the law of liability that relates to school boards remains unsettled and subject to further clarification by the courts, it is always important for boards to act prudently by seeking legal assistance whenever constitutional rights and due process are involved. The importance of selecting and retaining highly qualified school board attorneys cannot be overly emphasized. Ignorance of the law

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[355]Rich, 10.

will not suffice as a legitimate argument in a court. It is imperative for school board members to use sound, reasonable judgement when making critical decisions. Therefore, an informative briefing or training session in school law can greatly enhance the policy-making capabilities of any local school board.

# CHAPTER V

## SUMMARY, CONCLUSIONS, RECOMMENDATIONS

Local boards of education in North Carolina are established to formulate and implement policy that directs the education of public school students. As governing entities, local school boards direct through official actions the scope and emphasis of the local educational process. This mission has remained relatively unchanged over the past 300 years. However, the historical evolution of school boards, coupled with federal and state court decisions from 1940 to 1992 have influenced the processes used by school board officials to make and enact policy.

This study provides an analysis of how both the historical evolution of school boards and important court rulings have influenced modern school board functions. This analysis outlines how history and state and federal courts have helped to shape school board demographics and overall decision-making practices. The study offers insight into why boards of education in North Carolina function differently in procedures. Suggestions are offered for use in making educational decisions that are dependable, reasonable, effective, and sound.

Local boards of education in North Carolina have historically experienced a broad scope of authority in the

power to structure and implement policy. Certain aspects of the education function have been and will continue to be classified as state responsibilities. Local board members hold office by virtue of legislative enactment. Their powers may be extended or limited at the discretion of the state legislature.

Separate from the state in both function and operation, local school boards have experienced varying degrees of freedom in decision-making practices. However, the effectiveness of decision-making autonomy is closely linked to state regulations and budgetary appropriations or economic constraints.

As budgetary demands increase, local school boards will experience greater dependency on county and municipal governments to supply the funds necessary to fulfill the mission of providing a quality public education system within the jurisdiction each board serves. As a result, local boards will become more accountable to the public for their official actions. They will also become increasingly dependent on the public taxpayer to provide the funding necessary to maintain existent policies and programs. This dichotomous situation increases the responsibility of school board members, both individually and as a group, to make decisions that are intellectually and judicially sound.

This study had four purposes: (1) to review the historical development of local boards of education and how

this development relates to educational governance within the state; (2) to examine local board demographics around the state such as present membership, elected versus appointed boards, partisan versus nonpartisan elections, and general board structure; (3) to identify significant legal cases which affect local school board decision-making practices; and (4) to analyze the present and future status of local school boards in relation to the overall educational process.

The introductory material in Chapter I delineated the concerns regarding the effectiveness of local school boards that have been addressed within this study. The study sought to provide important suggestions for school board members to consider regarding compliance with laws involved during the policymaking and implementation stages of school board operations. In Chapter I, the study identified several key questions that were answered throughout the chapters of the dissertation. The answers to these questions serve as a basis for the development of guidelines for membership.

The first question listed in Chapter I was: What is the historical evolution of local school board operations in North Carolina? The responsibility of school board members has been to translate local public concern for the quality of education into actions that addressed specifically local concerns. These local concerns have led to many controversial issues involving school boards. There is little evidence to suggest that the local board of education is any less controversial in

1992 than it was years ago during the development of the state. The education of children has always been and continues to be the number-one priority of the local school boards across the state. Historically, one of the most controversial issues that local school boards have had to face is financing. Financial concerns continue to be one of the highest priorities of any board. Education has always been in need of public funding. This need can be observed from the early developmental stages of the Carolina colonies up to the present and remains a definite priority of practically all boards. There have been many attempts to solve the issue of "how much (money) is enough." This question continues to be a compelling interest to many governmental entities, even though the historical evolution of the local school board was primarily influenced by the character and accountability of board members who have successfully dealt with the issue.

Board members should also become knowledgeable in school law, personnel, and curriculum. As evidenced by the number of judicial decisions historically recorded, these areas have shown relative importance within the scope of a board's decision-making process.

Local school boards have historically experienced a broad scope of authority in the power to structure and implement policy. Certain aspects of the education function have been, and will continue to be, classified as those of statewide responsibility. In the final analysis, it is suggested that

education leaders review significant events of the past in order to gain an historical insight on planning the modern education processes of the future.

The second question was: How do local boards of education in North Carolina vary in composition? The structural composition of the school boards in North Carolina varies from area to area, board to board. As of 1992, there were 133 school boards in the state, but mergers will gradually decrease this total. The majority of board members are male (approximately 72 percent), Caucasian (approximately 82 percent), between the ages of 40 and 49 years (approximately 41 percent), and have some education beyond high school. The majority of school board members are elected at-large by the public. Most of the elections are held on a nonpartisan basis. In 1992, 34 partisan boards in the state required candidates to declare party membership before having their names placed on the election ballot. There are sixteen school boards to which members are appointed, either by city councils or county commissioners. Individual boards also vary in the number of members and the length of their terms. This variance of composition might have resulted from the early absence of a well-planned and properly financed state system of local school boards. Geographical and economic changes have caused some boards to either expand or reduce their overall composition. Some boards have not changed

demographically because of local historical preservation or customs.

There has been discussion about restructuring the local governance of school boards, especially in the selection of board members and the length of their terms. Alteration of the present mode of operation of boards, some of which have taken years to develop, would radically change the nature of the organization. Such a change could create chaos within the schools. Therefore, it is suggested that any move in this direction be done very slowly and deliberately, if at all. Future school district mergers will gradually change the system as it is presently known. Therefore, many local governance problems can be taken care of locally without the radical changes caused by outside intervention. The overall success of any school board is directly proportionate to the quality and effectiveness of the individual members who serve on the board.

The progress of some boards has been hampered by partisan politics while that of others has been enhanced. Advocates of the nonpartisan form of government have suggested that this method does not allow politics to impede educational progress. Political conflicts of interest are sometimes inevitable between governing bodies. However, some of these conflicts may be avoided through the reduction or elimination of partisan politics as they relate to the local school board.

A minority of school boards in North Carolina are appointed. Eleven boards are appointed by city councils or county commissioners, while five boards are appointed by other means such as self-appointment. The remainder of school boards within the state are elected. The elective method appears to be more representative of the general public and tends to promote the concept of accountability. State-wide conformity to the elective process rather than the appointive process is suggested.

The third question listed in Chapter I was: As a result of North Carolina General Statute 115C-50, what are the issues pertaining to mandatory training for school board members? There has been ongoing effort to improve the performance of school board members. Local boards serve as advocates for education within the community and across the state. Boards should possess a vision of what the school system can be and maintain accountability to ensure their mission is accomplished. Boards are becoming more accountable for their actions, especially those concerning student achievement and outcomes.

The concept of mandatory training for school board members is not new. In 1991, the North Carolina General Assembly officially enacted mandatory training for school board members. The new training requirements specified that board members receive twelve clock hours of training annually, giving some leeway to board members within the structure of

the new law (See Appendix E). Points and hours as established by the North Carolina School Boards Association will accumulate during the year from July to June, and will be reported to board members each August. Contact hour values have been assigned to various meetings and seminars produced in conjunction with the North Carolina School Boards Association and North Carolina General Assembly mandates.

The idea of mandatory training for school board members is valid. Total participation by every member may be difficult to enforce, but still has merit (perhaps user-friendly computer programs could be an asset in this training). Therein lies the weakness of the concept. Time constraints, financial difficulties, and even family conflicts may prevent everyone from fulfilling the twelve-clock-hour requirement. Therefore, improvements to the system must be initiated by state and local education officials to ensure that the process achieves its intended purpose. Total participation by everyone involved will be the key to success.

Is it necessary for board members to pursue this training in order to increase their professional knowledge of educational management? The old idea that being the parent of a child in school qualifies a person for a waiver from this training is no longer valid. When a person is elected or appointed to a board, there should be a progressive professional development chart already waiting for the new board member. A Code of Ethics for school board members has

been adopted by the North Carolina School Boards Association (See Appendix D). This chart should contain a check-off list outlining new board member seminars, district meetings, state and national conventions, special subject area meetings, and other opportunities for enrichment. The North Carolina School Boards Association and the National School Boards Association have conducted various workshops and seminars over the years to improve school boardsmanship. The North Carolina School Boards Association has enacted a program called the Academy for School Boardsmanship. Points for participation are given to board members enabling them to earn certification credits. In the process, board members receive training on the current trends and issues affecting education. Many of the seminars are held in conjunction with other state and local agencies such as the North Carolina Institute of Government. These agencies are allies of local school boards and should be used accordingly to help educate lay members of boards of education.

Accountability is the key word in board decision making, it is imperative for members to pursue some type of ongoing training. It is especially important for newly elected or appointed board members to attend training seminars. There should be a progressive program for professional development initiated for each board member, similar to those used by public school teachers (Plan of Professional Development or PDP). PDPs for board members should contain an outlined

format of prescribed training options available to board members. These options could include new board member seminars, district, state, and national meetings, and special workshops or other opportunities for enrichment. Basic offerings could be designed by the North Carolina School Boards Association and distributed to all boards throughout the state for individual modification as needed.

Nonparticipation by board members in training sessions or failure to complete the twelve-clock-hour training requirements could result in financial penalties being levied against local school districts. Legislative law or state school board mandates could result in some type of action against local school districts. However, it has yet to be determined if this is a viable solution as an enforcement technique for N.C.G.S. 115C-50.

The fourth question asked in Chapter I was: Are there judicial decisions that influence or control school board decision making for the prevention of litigation? School boards have awesome power. They have all the power specifically given to them by the state constitution and statutes, and they have the power not specifically denied to them by those same documents so long as their policy-making discretion does not collide with the federal constitution or statutes as interpreted by the United States Supreme Court. The same is true regarding the state constitution and statutes and state courts. Issues such as student rights,

teacher/employee rights, the handicapped, discrimination, religion, and school financing have been litigated in federal and state courts and form a sound policy basis for school board decisionmaking.

There are many judicial decisions that influence school board policy making, but it is the federal constitution and statutes and the state general statutes that control school board operations. How these laws are administered and interpreted depends entirely on decision-making capabilities of the board members, both collectively and individually. However, individual board members may not create policy or take official action without approval from a majority of that respective board. This check-and-balance system helps to reduce litigation, but it does not necessarily prevent it. Any school board can be sued, either by an individual or by some other special interest group. It is imperative that boards have strong representation from their school board attorneys, either through contractual agreement or by other arrangement.

Boards should not be afraid to call on their attorneys during the decision-making process. This underscores the importance of compliance with all statutory mandates and other legal principles that have already been established in the courts. Boards must use sound judgment and common sense in establishing reasonable policies within their districts. Careful examination of some of the lawsuits filed against

school districts indicates that most school law litigation is related directly or indirectly to board decisions. However, school board attorneys are not the policy makers; they are advisors. The major advisor in such matters should be the superintendent and his or her staff. Boards should never hesitate to make crucial decisions as long as there are clearly written and well-researched policies implemented within their districts.

The fifth question was: What factors are relevant in determining whether a school board or its members are performing as expected by its constituency? One of the most common ways to tell if a board or its members are performing effectively is to survey the general public. Boards should monitor the attitudes and ideas of the people within their respective school districts. Boards often fail to use the general public as a barometer to determine if problems exist or if change is necessary in some areas. However, some board members may have differences of opinion on this issue. How well individual members work together will often determine the effectiveness of a board of education. Because of the importance of the school board member's task, differences in the philosophies and opinions that are acceptable in most professional relationships are sometimes not acceptable among board members. Efforts to set and reach common district goals serve as a glue to bind board members together and to bridge conflicting philosophies, needs, and desires. Board

unification is one avenue to becoming more effective in the local governance process.

Effective school boards will have effective leadership. The membership of these boards will consist of leaders rather than followers, and optimists rather than pessimists. Further development of management styles will need to take place in order to identify leadership potential at the local level. It is natural to think of leadership in terms of individual characteristics, rather than in terms of leadership processes. A board exercises leadership with its school system when its members combine to develop well-planned policies, hire capable personnel, set common goals in conjunction with community needs, and do everything possible to meet students' needs. By setting short-and long-term goals, the board establishes a basic framework for administrative action. When goals are not specified by the board, school administrators are likely to form their own goals, a situation which often leads to conflict. However, it is usually the general public that reserves the right to make the ultimate decision concerning how well a board of education is performing.

Boards of education, a uniquely American institution, are ideally conceived as groups of respected lay citizens, selected by their peers to improve the quality of public education. In North Carolina, the General Assembly has enacted comprehensive laws regarding local boards of

education, including an extensive delineation of their powers and duties. A careful review of these defined powers and duties reveals that the manifest purpose of local boards, as expressed in the statutes, has not generally strayed from the previously stated central mission of the board--policy making and implementation. Critics of the school board often contend that these policies are faulty and do not represent the needs of all the people. A philosophical difference occurs, usually because the critics do not understand what local governance of public education is all about. However, major political "jealousies" do occur between school boards and city council members or county commissioners. There always has been and will continue to be political relationships among these entities. Political leadership is an important dimension in operating the schools.

In an interdependent society, it is sometimes difficult for one organization to act without consultations with numerous other organizations. Most educational differences occur when boards of education engage in the day-to-day administration of the school system. Though the primary purpose of the board is to make policy and monitor the implementation of policy many boards go far beyond their primary purpose and therefore, undermine the efforts of the superintendent or other administrators. This characteristic of boards may partially explain the high turnover rate among superintendents (twenty-two through the latter part of 1992).

There is no provision in a board member's oath of office that requires daily oversight or intervention into the operation of the public schools.

Administrators should be held accountable for the performance of their required duties. However, school boards are often guilty of not allowing the administrators ample time or opportunity to meet the goals and objectives as established within the school districts, even though boards have the oversight responsibility to ensure policy is being carried out. Clear communication and mutual understanding of needs will increase trust between boards and administrators, allowing everyone the opportunity to share success within their educational environment. The relationship between the school board and the administration becomes a simple matter of trust and respect.

The sixth question was: Is the local school board's accountability increasing or decreasing as a result of immunity from tort liability? Predicated upon analysis of judicial decisions, local board members, whether elected or appointed, become part of the political process. They are accountable to their constituents and must have an obligation to carry out certain mandates. School board members must understand that they are responsible for what is usually either the biggest or one of the biggest businesses in the community. Since the general public remains concerned about

tax dollars, accountability should be paramount for board members.

The constant threat of litigation is enough for most school boards to act accountably. As long as boards act honestly, in good faith, and within their prescribed authority, they will not be held liable for an injury growing out of an error of judgement. However, individual board members can and will be sued if they act independently outside of their scope of authority. Therefore, it can be assumed that if a board member's accountability increases, the school board's accountability will proportionately increase.

School board members and the general public should familiarize themselves with the six National Education Goals as established in 1990 by President Bush and the nation's governors. The vast majority of citizens have a strong belief and faith in the institution of public education, and most individuals support efforts to improve the schools. For example, the general public looks to the school board for support and implementation of these six goals, as follow:

1. All children in America will start school ready to learn.
2. The high school graduation rate will increase to at least 90 percent.
3. American students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter including English, mathematics,

science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in modern society.

4. United States students will be first in the world in science and mathematics achievement.
5. Every adult American will be literate and will possess the knowledge and skills necessary to compete in global economy and exercise the rights and responsibilities of citizenship.
6. Every school is America will be free of drugs and violence and will offer a disciplined environment conducive to learning.

These goals should help to create many changes in America's 110,000 public and private schools, promote change in every American community, and foster change in the present strategies being implemented about learning.

Data from reports published in 1991 and 1992 indicate all fifty states, including American Samoa, Guam, Northern Marianas, Puerto Rico, and the Virgin Islands have begun implementation of the National Goals. Some states such as Colorado and Illinois have gone beyond the six National Goals by establishing their own goals as determined by international standards. North Carolina has corresponded to these National Goals by realigning the standard courses of study in most

subjects to adhere to national standards and revising tests to include more open-ended discussion questions rather than multiple-choice answers. The elementary schools, middle grades, and secondary schools are changing formats to increase higher-order thinking skills. However, no comparable data are available to determine if all of the goals have been met. Upcoming reports such as the National Education Goals Report and North Carolina 2000 will address the national and state trends in meeting the established goals.

What the public should know is that the local school board is the key to successfully transforming broad goals into desirable realities. A vast majority of local school boards are elected and as such have credibility and legitimacy derived from the democratic support of their local communities.

Many different theories exist on the most logical way to conduct the decision-making process, and everyone has his or her own argument. However, a board should choose its own legal process or procedures that can work best in a given situation and should strive to eliminate any "hidden agendas" that surface during the decision-making process. Additionally, continuous board self-evaluation should be conducted to determine areas that need improvement. Moreover, there must be trust among board members, as well as good faith, sensitivity, and respect for one another. Some board members mistakenly believe that the public will determine

their overall effectiveness through their re-election or re-appointment, a political process that sometimes does not accurately gauge how well a board member is performing. Boards that are well-informed and educated on the issues will usually make effective decisions through unified efforts of the board, the administration, and the general public. If this process does not exist within the educational district, change will inherently occur through either board member or superintendent turnover.

School boards are arguably America's finest examples of democracy and representative government. Yet some people think education will be advanced by relinquishing the policy functions of school boards to other entities such as special interest groups in the community. There has been some attempt at the federal level to alter the representative system of local school boards through various alterations of the Voting Rights Act. Efforts to establish special interest group committees to assume basic school board functions have been initiated. Additionally, local special interest groups have contributed to the creation of hidden agendas that result from political pressures placed upon board members. This pressure is not easy to deal with, especially by board members trying to serve in the Jeffersonian tradition of voting their consciences.

Various legal principles can be determined by studying the court decisions involving school boards. The courts do

not usually question a board's action if constitutional prudence has been used in its decision-making process. Instead, the challenges appear (1) where procedural due process has not been closely observed, (2) where board policy is not clearly defined or judicially prudent, (3) where communication with the general public is not clear and precise throughout the policy-making process, and (4) where there is lack of a good faith attempt on the part of the local board to realign itself with state and federal mandates.

The problems facing society remain essentially the same. Schools alone cannot do the job of advancing excellence and equity in education. There must be a total collaboration within the community itself to bind philosophies and goals for educational enhancement. The disjointedness some school districts suffer could easily be overcome through combined efforts of the board and superintendent. The superintendent--like any chief executive officer of any private or public enterprise--is the premier agent of change and the most vulnerable during educational conflict. He or she is under unparalleled pressure to change the schools to meet the demands projected for education in the twenty-first century, thus placing unrelieved strain upon board-superintendent relations. However, part of the pressure can be relieved if the school board accepts its direct accountability to the people.

School boards and superintendents, especially in times of profound social change, must endeavor to sustain positive relationships. Educational philosophies are diverse. In both private and public sector struggles, boards often prevail because they have the ultimate authority under the law. Open communication among board members, superintendent, and central office staff will often eliminate most hidden agendas before any develop. Again, trust becomes a key issue due to the discretionary authority granted to the superintendent and his or her staff. The result is an unprecedented partnership, causing an enormous, effective impact on the policy-making skills of the board. The policies created through this partnership will withstand scrutiny in any court of law.

It is doubtful that board accountability will decrease as long there is a possibility of litigation from tort liability. This will remain a relative issue regardless of any immunity factor, simply because no one enjoys being taken to court. The increasing number of lawsuits against school boards are slowly eroding board immunity. Parenthetically, board accountability should continue to rise in order to counter the threat of litigation.

Based upon the questions answered in the study, there are certain conclusions which can be deduced and which will be noted in the following section.

## Conclusions

Based upon an analysis of the data, the following general conclusions can be made:

1. The primary purpose behind the development of the local board of education has been and continues to be the education of children.
2. The concept of the local school board originated in colonial New England, was further developed in the Albemarle Sound region of North Carolina in the mid-1600s, and remains relatively unchanged in the 1990s.
3. Adequate funding and accountability of representation continue to be critical issues facing local boards.
4. Predicated upon an analysis of judicial decisions, school boards that fail to follow all requirements based upon procedural and substantive due process rights when dealing with student rights, discrimination, religion, teacher/employee rights, handicapped students, and school district financing

run the risk of having legal action taken against them.

5. The North Carolina State Board of Education has constitutional authority to establish rules and regulations affecting local school board operations. However, the state legislature is the primary source of law regarding school board operations.
6. Lack of clear communication and cooperation between the board of education and other governmental agencies can create territorial power struggles, thereby hindering the primary purpose of the educational process.
7. Lack of communication and trust between the board and the superintendent and his or her staff can cause unrest and discord within the school district. Such an approach can contribute to possible administrative turnover or creation of hidden agendas within the school district.
8. The primary responsibility of every school board member is to assist in the development of effective educational

policy. This policy may then be used to run the schools within the board's district more effectively and efficiently.

9. Mandatory training of school board members has the potential to improve overall board effectiveness while offering an opportunity for members to build networks, establish a data bank, and earn certification.
10. Parental and community involvement in the schools is an important key to educational success. Board accountability will increase as a result attainment of missions and goals through self-evaluation, completion of district objectives, prudent selection and fair evaluation of the superintendent.

## Recommendations

The future status of local school boards in North Carolina is being shaped by the actions of present boards across the state. Judicial, legislative, and executive leaders will be the primary actors that shape the political and economic future of the local school boards.

The following recommendations are made based on an analysis of the historical and legal research of the study. These recommendations should serve as guidelines for boards of education as they proceed with the local governance of the public schools:

1. North Carolina should conduct further research in the area of school board member effectiveness. Based on the findings of this study, completion of a training seminar does not guarantee complete success as a board member. Learning should be an ongoing process for board members just as it is for any other individual.
2. The North Carolina General Assembly should further refine G.S. 115C-50, which specifies mandatory training for all school board members to include accountability for their actions. Further development of this legislation should be in conjunction with the North Carolina School Boards Association.
3. Universities, regional colleges, and community colleges should develop courses dealing primarily with school boardsmanship. These courses should be

made available for anyone interested in this aspect of local governance, and could be offered within the regional schools of education or political science.

4. Partnerships should exist between the local boards of education and the colleges and universities within the region to enhance the preparation and employment of highly qualified teachers and administrators. Internships, practicums, and professional exchanges should be arranged through collaborations for learning.
5. Local school boards must establish and maintain educational partnerships within the districts they serve in order to establish effective public relations. These partnerships should include businesses, other governmental agencies, teachers' and administrators' organizations, merchants' associations, parents, and students themselves.
6. School boards should become more involved with the school environment by becoming familiar with the overall structure of

their respective school districts. School boards have a policy-making responsibility. Boards also have an oversight responsibility to make sure that policy is being carried out as stated as well as receiving the necessary information to answer questions raised by citizens regarding that policy.

7. Local boards of education should endeavor to eliminate disjointedness involved with the budget process. Closer working relationships should be established with finance officers on staff. Audit reports should be closely monitored and adhered to in order to prevent penalties or sanctions. Prudent financial management contributes to effective boardsmanship.
8. School board attorneys should be utilized more frequently to train and advise board members on the prevention of tort liability and updates on school law including property, personnel matters, and policy making.
9. Guest lecturers and visiting professional education personnel should be utilized for board meetings where special issues

are of interest within the community. This process can also be utilized for board members who either cannot or will not attend meetings outside their school districts.

10. Further research should be conducted on board-superintendent relationships in an effort to reduce administrative turnover within the state.
11. Boards should endeavor to provide adequate modern technology for all schools within their districts. No classroom or office should be without a computer, the technological software to accompany it, and the knowledge to use it.
12. The present system of school board selection is adequate, but further consideration should be given to the development of a state-wide election process for board members. Appointments to school boards should be discontinued. Nonpartisan elections will help to reduce political power struggles.

13. Boards should concentrate more on formulation and implementation of policy--not the administration of it.

## Further Recommendations for Study

The challenge has been made for all school boards to improve the quality of education and to revitalize America's public schools. For the school board member, this means a vigorous assertion of legitimate, dedicated, and accountable policy making. The formulation, implementation, and revision of board policies must be a continuous process to ensure the integrity of the position of school board member. Further research into school board decision making is recommended in an effort to analyze the overall effectiveness of the process using surveys, questionnaires, and interviews.

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# APPENDIX A

## SIGNIFICANT U. S. SUPREME COURT DECISIONS AFFECTING PUBLIC SCHOOLS (1940- 1990)

**1940**

**Minersville v. Gobitis**

**1st Amendment, Free Exercise of Religion.** Statute requiring students to salute flag is not unconstitutional. This was overturned by **Barnette.**

**1943**

**West Virginia State Board of Educ. v. Barnette**

**1st Amendment, Free Speech.** Statute requiring students to salute flag is unconstitutional.

**1947**

**Everson v. Board of Educ.**

**1st Amendment, Establishment of Religion.** Public school may provide transportation to students to and from private sectarian schools.

**1948**

**McCollum v. Board of Educ.**

**1st Amendment, Establishment of Religion.** Public school may not provide release time for religious instruction on public school property.

**1952**

**Zorach v. Clauson**

**1st Amendment, Establishment of Religion.** Public school may provide release time for students to attend religious classes off premises.

**Adler v. Board of Educ.**

**1st Amendment, Free Speech & Assembly. 14th Amendment, Due Process.** Statute that denies deployment to members of organizations that advocate overthrow of the government by force or violence does not violate right of free speech and assembly. Nor does the statute violate the due process clause by making membership in one of the listed organizations prima facie evidence of disqualification for employment in the school system.

**1954**

**Brown v. Board of Educ.**

**14th Amendment, Equal Protection.** Statute requiring separation of black and white students is unconstitutional.

**Bolling v. Sharpe**

**5th Amendment, Due Process.** Segregated schools in District of Columbia violate due process clause of fifth amendment.

**1958**

**Beilan v. Board of Educ.**

**14th Amendment, Due Process.** Teachers due process rights are not violated by discharge for refusing to answer superintendent's questions regarding communist affiliations and activities.

**Cooper v. Aaron**

**14th Amendment, Equal Protection.** State legislature and governor cannot nullify constitutional right of school children not to be discriminated against in school admission by suspending desegregation plan for 2 1/2 years based on their opposition to the plan and threats of mob violence.

**1960**

**Shelton v. Tucker**

**14th Amendment, Freedom of Association.** Statute requiring every public school teacher to file annual affidavit listing every organization to which he has belonged or regularly contributed for the last five years violates associational freedoms protected by the Fourteenth Amendment.

**1961**

**Cramp v. Board of Public Instruction**

**14th Amendment, Due Process.** Statute requiring every state employees to swear he has never lent his "aid", support, advice, counsel or influence" to Communist Party is so vague and uncertain as to violate due process.

**1962**

**Engel v. Vitale**

**1st Amendment, Establishment of Religion.** Recitation of state composed prayer in public school is unconstitutional.

**1963**

**Goss v. Board of Educ.**

**14th Amendment, Equal Protection Clause.** Desegregation. Minority transfer plan as sole means of desegregation struck down.

**McNeese v. Board of Educ.**

**14th Amendment, Equal Protection Clause.** Desegregation. Students seeking reassignment need not exhaust administrative remedies before going into court.

**Abington Township v. Schempp**

**1st Amendment, Establishment of Religion.** Bible reading and prayer not permitted in public school classroom.

**1964**

**Chamberlain v. Dade County Bd. of Public Instruction**

**1st Amendment, Establishment of Religion.** Statute requiring devotional Bible reading and reciting of prayers in Florida's public schools is unconstitutional.

**Griffin v. County School Board**

**14th Amendment, Equal Protection.** Desegregation. County school board's closing of public schools while contributing to support of private white segregated schools in order to avoid desegregation denies equal protection.

**Bagett v. Bullit**

**14th Amendment, Due Process.** Washington statutes requiring teachers and state employees to take loyalty oaths as a condition of employment are unconstitutionally vague.

**1965**

**Rogers v. Paul**

**14th Amendment, Equal Protection.** Desegregation. Students not yet in desegregated schools have standing to challenge racial faculty allocation. Assignment of students to a school on the basis of race is unconstitutional.

**1966**

**Elfbrandt v. Russell**

**1st Amendment, Freedom of Association.** Arizona law requiring public employees to take loyalty oath and subjecting them to prosecution and discharge if they knowingly become or remain a member of the Communist Party violates freedom of political association.

**1966**

**Sailors v. Board of Educ.**

**14TH Amendment, Equal Protection Clause.** Statute under which county school boards are appointed by only delegate from each local board is constitutional because county boards perform administrative rather than legislative functions.

**Keyishian v. Board of Regents**

**1st Amendment, Free Speech.** New York statutes making treasonable or seditious words or acts grounds for removal from public school system, barring any person who willfully advocated forceful overthrow of the government from public school employment or disqualifying school employees involved

in distribution of written materials advocation forcible overthrow, are unconstitutionally vague and violates the First Amendment.

**1968**

Green v. County School Board

**14th Amendment, Equal Protection.** Desegregation. A plan utilizing "freedom of choice" rules insufficient because it failed to present a real prospect for dismantling the state imposed dual system "at the earliest practical date."

Monroe v. Board of Commissioners

**14th Amendment, Equal Protection.** Desegregation. "Free-transfer plan" is not a realistic plan to promptly meet school board's duty to convert to a unitary system.

Pickering v. Board of Education

**1st Amendment, Free Speech.** Teacher may not be dismissed from employment based on exercise of his right to speak on issues of public importance.

Board of Educ. v. Allen

**1st Amendment, Free Exercise and Establishment of Religion.** New York law requiring schools to lend textbooks to parochial school students free of charge does not violate the establishment or free exercise clauses.

Epperson v. Arkansas

**1st Amendment, Establishment of Religion.** Statute barring teaching of evolution held unconstitutional.

Raney v. Board of Education

**14th Amendment, Equal Protection.** Desegregation. Freedom choice plan inadequate to convert dual school system to unitary one.

**1969**

Tinker v. Des Moines

**1st Amendment, Free Speech.** Students "do not shed their constitutional rights at the school house door." School policy prohibiting wearing of black armbands in protest of the Viet Nam War is unconstitutional.

U.S. v. Montgomery County Bd. of Educ.

**14th Amendment, Equal Protection Clause.** Desegregation. Court order requiring assignment of teachers based on certain mathematical formulas involving flexible racial ratios was a reasonable step toward desegregation of public school system.

**1970**

**Northcross v. Board of Educ.**

**14th Amendment, Equal Protection Clause.** Desegregation. Evidence supported district court's findings that state-imposed dual system of schools had not been dismantled and board of education's desegregation plans did not have reasonable prospect for dismantling the system at the earliest practicable date.

**1971**

**Griggs v. Duke Power Co.**

**Title VII of Civil Rights Act of 1964.** Employer may not require high school education or passing a standardized general intelligence test as a condition of employment or job transfer where there is not showing that criteria are significantly related to job performance and where the requirements have a disparate impact on blacks.

**McDaniel v. Barressi**

**14th Amendment, Equal Protection. Title IV of Civil Rights Act of 1964.** Desegregation School board's student assignment plan under which attendance zones were drawn in an effort to students being assigned to schools outside certain heavily black areas did not violate equal protection clause or Civil Rights Act of 1964.

**Davis v. Board of School Commissioners**

**14th Amendment, Equal Protection.** Desegregation. Anti-busing law prohibiting assignment of any student on the basis of race or for the purpose of creating racial balance in schools and forbidding busing to accomplish such purposes was unconstitutional since it would deprive school officials of a tool absolutely essential to eliminate existing dual school systems.

**North Carolina State Board of Educ. v. Swann**

**14th Amendment, Equal Protection.** Desegregation. Anti-busing law prohibiting assignment of any student on the basis of race or for the purpose of creating racial balance in schools and forbidding busing to accomplish such purposes was unconstitutional since it would deprive school officials of a tool absolutely essential to eliminate existing dual school systems.

**Swann v. Charlotte-Mecklenburg Board of Educ.**

**14th Amendment, Equal Protection. Title IV of Civil Rights Act of 1964.** Desegregation. To dismantle a dual school system, various tools may be used in including limited use of mathematical ratios, remedial altering of attendance

zones including pairing, clustering or grouping of schools and cross-town busing.

**Lemon v. Kurtzman**

**1st Amendment, Establishment of Religion.** Constitutionality of government action under the establishment clause is determined by three part test: 1) secular purpose; 2) must neither advance nor inhibit religion; and 3) must not result in excessive entanglement of government in religion.

**1972**

**Perry v. Sinderman**

**1st Amendment, Free Speech. 14th Admendment, Due Process.** A governmental benefit may not be denied on a basis that infringes constitutionally protected interests, especially freedom of speech. A person may establish a property interest in continued employment, subject to procedural due process protection, on the basis of agency rules, mutually explicit understandings or words and conduct of employer. Subjective expectancy is not enough.

**Board of Regents v. Roth**

**14th Amendment, Due Process Clause.** Property interests protected by the due process clause are not created by the Constitution but by state action. Where state university professor had no tenure rights and no state statute or university rule or policy secured his interest in reemployment, the university was not required to give him a hearing when it declined to renew his contract.

**Wisconsin v. Yoder**

**14th Amendment, Equal Protection.** Desegregation. City which had been part of county school system violated the Constitution by establishing a separate school system where effect of doing so impeded the desegregation process. Court should consider the effect of the action, not the plan's purpose.

**Wright v. Council of City of Emporia**

**14th Amendment, Equal Protection.** Desegregation. City which had been part of county school system violated the Constitution by establishing a separate school system where effect of doing so impeded the desegregation process. Court should consider the effect of the action, not the plan's purpose.

**U.S. v. Scotland Neck City Board of Educ.**

**14th Amendment, Equal Protection.** Desegregation. Creation of a new school district for city authorized by state statute is impermissible where city had been part of county school district in process of dismantling dual school system

and which would cause the newly created unit to remain 89% black. Court found the creation of new district would impede disestablishment of dual school system.

**1973**

**San Antonio Independent School Dist. v. Rodriguez**

**14th Amendment, Equal Protection.** Texas school finance system under which each school district supplements state aid through tax on property within its jurisdiction does not discriminate against poor people as a class and does not interfere with the exercise of a fundamental right or liberty. Education is not a fundamental right guaranteed by the U.S. Constitution. The Texas system does not violate equal protection since it bears a rational relationship to a legitimate state purpose.

**Keys v. School Dist. No. 1**

**14th Amendment, Equal Protection.** Desegregation. A Finding of intentionally segregative school board actions in a meaningful portion of a school system establishes a prima facie case of unlawful segregative design on the part of school authorities and shifts to those authorities the burden of proving that other segregated school within the system are not also the result of intentionally segregative actions.

**Levitt v. Pearl**

**1st Amendment, Establishment of Religion.** State statute that provides for reimbursement of nonpublic schools for expenses related to the administration, grading, compiling and reporting of certain tests were free of religious instruction in order to avoid teaching students the religious tenets of the sponsoring church.

**Norwood v. Harrison**

**14th Amendment, Equal Protection.** Textbook program that lent books to students in public and private schools without reference to whether any participating private school had racially discriminatory policies is unconstitutional.

**Sloan v. Lemon**

**1st Amendment, Establishment of Religion.** Pennsylvania statute providing for reimbursement of tuition paid by parents of students in nonpublic schools violates the establishment clause because it has the primary effect of advancing religion.

**Pearl v. Nyquist**

**1st Amendment, Establishment of Religion.** New York law which provided maintenance and repair grants to nonpublic schools and tuition reimbursement grants and tax benefits to parents with children attending nonpublic schools violates the

establishment clause because its primary effect advances religion.

**1974**

**Cleveland Board of Educ. v. LaFleur**

**14th Amendment, Due Process. Mandatory school board rules** requiring pregnant teachers to take leave at the fourth or fifth month before the birth of the child violates the due process clause because these arbitrary dates bear no valid relationship to the state's interest in preserving the continuity of instruction. Rule making teachers ineligible to return to work until after the child was at least three months old is also invalid.

**Wheeler v. Barrera**

**Title I of Elementary and Secondary Education Act of 1965.** Parochial School students are entitled to receive comparable, but not necessarily the same, services provided to public school children under Title I of the ESEA.

**Lau v. Nichols**

**Title VI of Civil Rights Act of 1964.** The Department of Health, Education, and Welfare did not abuse its authority by requiring districts to provide English language instruction or other adequate instructional methods to students of Chinese ancestry who did not speak English. The failure to provide them a meaningful opportunity to participate in the public education violates Title VI.

**Milliken v. Bradley**

**14th Amendment, Equal Protection.** Desegregation. Court may not order multi-district remedy for de jure desegregation in a single district without first showing significant segregative effect in another district. It must be shown that racially discriminatory acts of the state or local school districts or of a single-school district have been a substantial cause of interdistrict segregation.

**1975**

**Goss V. Lopez**

**14th Amendment, Due Process.** Right to attend school is a property right protected by the due process clause. Students must be given notice of charges and opportunity to refute them, before suspension even when suspension is for only 10 days or less.

**Wood v. Strictland**

**Section 1983.** A school board member is immune from liability for damages under section 1983 unless he knew or reasonably should have known that the action would violate the constitutional rights of the affected student or if he took

the action with malicious intention to cause a deprivation of constitutional rights or other injury to the student.

**Meek v. Pittenger**

**1st Amendment, Establishment of Religion.** Direct load of instructional materials and equipment to nonpublic schools and the provision of auxiliary services such as counseling, testing, psychological services, speech and hearing therapy, teaching and related services for exceptional children to students enrolled in nonpublic schools violate the establishment clause. Lending textbooks without charge to children attending nonpublic schools is constitutional.

**1976**

**Hortonville Joint School District No. 1 v. Hortonville Educ. Association**

**14th Admendment, Due Process.** School board that had acted as a negotiator with its teacher was not disqualified from deciding to terminate teachers who had participated in an illegal strike since board members did not have the kind of personal or financial stake in the decision that might create an impermissible conflict of interest precluded by due process clause.

**Washington v. Davis**

**14th Amendment, Equal Protection.** Test for police officer candidates is not unconstitutional solely because it has a racially disproportionate impact. Positive relationship between the test and performance in the police training program is sufficient to validate the test.

**Pasadena City Bd. of Educ. v. Spangler**

**14th Amendment, Equal Protection.** Desegregation where the school district had established a racially neutral system of student assignment pursuant to court order, lower court erred in enforcing its order so as to require annual adjustments so that no school would be a majority of any minority.

**Madison Joint School Dist. No. 8 v. Wisconsin Employment Relations Commission.**

**1st Amendment, Free Speech.** Commission's enforcement of a statute that prohibits school board from "negotiating" with non-union teachers, is unconstitutional to the extent that it prohibits board from allowing a nonunion teacher to communicate her views at a public school board meeting on matters involved in the board-union negotiations.

**1977**

**Mt. Healthy City School Dist. v. Doyle**

**1st Amendment.** Where the exercise of a First Amendment right is shown to be a "motivating factor" in the school board's decision to nonrenew a teacher, the board has the right to show that it would have reached the same decision even in absence of the protected conduct.

**11th Amendment.** Under Ohio law a school district is treated more like a county or city than an arm of the State and, therefore, is not entitled to immunity under the Eleventh Amendment.

**Ingraham v. Wright**

**8th Amendment.** The cruel and unusual punishment clause of the Eighth Amendment does not apply to disciplinary corporal punishment in the public schools.

**14th Amendment, Due Process.** Corporal punishment in public schools implicates a constitutionally protected "liberty" interest, but procedural due process is satisfied by state common-law remedies.

**Wolman v. Walter**

**1st Amendment, Establishment of Religion.** Ohio statute authorizing aid to the students, supplying of standardized tests and scoring services, speech and hearing diagnostic services provided in the nonpublic school, therapeutic services at a neutral site are constitutional; provision of instructional materials and equipment and unrestricted transportation and services for field trips are unconstitutional.

**Dayton Bd. of Educ. v. Brinkman**

**14th Amendment, Equal Protection.** Desegregation. System-wide desegregation remedy was not warranted in absence of showing of system-wide conditions resulting from intentionally segregative actions of the board.

**Milliken v. Bradley**

**14th Amendment, Equal Protection.** Desecration. Plan which includes educational components, (teacher trailing, testing and counseling) is appropriate to remedy direct consequences of dual school system in Detroit.

**10th and 11th Amendments.** Court direction State to pay 1/2 of the cost of educational components of desegregation plan does to violate Tenth or Eleventh Amendments.

**Abood v. Detroit Board of Educ.**

**1st Amendment.** "Agency shop" arrangement where employer deducts a "service fee" from the salaries of nonmember teachers equivalent to the amount of the union dues does not

violate first amendment to the extent the fees are used for collective bargaining, contract administration and grievance adjustment purposes but are unconstitutional to the extent the fee is used for ideological causes not related to collective bargaining.

**Hazelwood School Dist. v. U.S.**

**Civil Rights Act of 1964, Title VII.** In determining whether a pattern or practice of racial discrimination in employment of teachers exists, comparison must be made between the percentage of black teachers in the district and the percentage of blacks in the relevant labor pool (not percentage in the student body). District must be allowed to rebut the prima facie case by statistical proof on hiring practices since the district became subject to the Act.

**1978**

**Board of Curators of Univ. of Mo. v. Horowitz**

**14th Amendment, Due Process.** Far less is required to meet due process requirements in a college academic dismissal than a disciplinary dismissal. Notice of college's dissatisfaction with standards and the careful and deliberate decisionmaking process was sufficient.

**Carey v. Piphus**

**Section 1983.** Student deprived of right to procedural due process is entitled to nominal damages will not be presumed. Damages must be tailored to the interests protected, and plaintiff must prove pain and suffering was actually caused by the deprivation.

**N.E.A. v. South Carolina**

**14th Amendment, Equal Protection, Title VII of Civil Rights Act of 1964.** Summary affirmance of lower court decision upholding the use by the State of South Carolina of the National Teacher's Examination (NTE).

**Monell v. Dept. of Social Services of City of New York**

**Section 1983.** Local governmental units are "persons" covered by Section 1983, but they are liable only where injury results from an official policy, not under a theory of respondeat superior. Local government officials sued in their official capacity are "persons" under Section 1983 where the local government is suable in its own name. Reverses the 1961 case of Monroe v. Pape to the extent Monroe holds that local governments are immune from suit under 1983.

**Regents of Univ. Of Calif, v. Bakke**

**Title VI of Civil Rights Act of 1964. 14th Amendment, Equal Protection.** Goal of racial diversity is sufficient reasons for consideration of race in admissions decisions,

provided that admission of persons like plaintiff, a white medical school applicant, is not precluded solely on the ground of race. Race is a suspect classification and preference for any group on the basis of race or ethnic origin is subject to strict scrutiny. guarantees of the fourteenth amendment and title VI are coextensive.

**Dougherty County Bd. of Educ. v. White**

**Voting Rights Act.** County school board is covered by the Voting Rights Act when it exercises control over the electoral process and should have obtained prior federal approval for a rule requiring its employees to take unpaid leaves of absence while they campaigned for elective office.

**1979**

**Givhan v. Western Line Consol. School Dist.**

**1st Amendment, Free Speech.** Public employee does not lose his First Amendment protection of freedom of speech where he communicates privately with his employer rather than spreading his views before the public.

**Harrah Independent School Dist. v. Martin**

**14th Amendment, Due Process and Equal Protection.** School board did not violate tenured teacher's rights by failing to renew teacher's contract because of her failure to earn required college credits.

**Davis v. Southeastern Community College.**

**Section 504 of Rehabilitation Act.** The Act imposes no requirements upon an educational institution to lower or to effect substantial modifications of standards to accommodate a handicapped person; however, it may not assume that mere possession of a handicap indicates an inability to function in a particular context.

**Ambach v. Norwick**

**14th Amendment, Equal Protection.** New York statute precluding certification as a public school teacher of any person not a United States citizen unless that person has manifested an intention to apply for citizenship is valid.

**Cannon v. University of Chicago**

**Title IX of Education Amendments of 1972.** Private litigants have a right to pursue a cause of action under Title IX for alleged violations of their statutory rights.

**Dayton Bd. of Educ. v. Brinkman**

**14th Amendment, Equal Protection.** Desegregation. School board was purposefully operating segregated schools in a substantial part of the district which supported an inference

that segregation in other parts of the system was also purposeful absent contrary evidence.

**Columbus Bd. of Educ. v. Penick**

**14th Amendment, Equal Protection.** Desegregation. Proof of foreseeable consequences is one type of relevant evidence of racially discriminatory purpose, and it may itself show a failure to fulfill the duty to eradicate the consequences of prior purposefully discriminatory conduct.

**Board of Educ. of City of New York v. Harris**

**Emergency School Assistance.** "Discrimination" for the purpose of determining eligibility for funding under ESAA includes both statistical disproportions in teacher assignment as well as segregation caused by intentional acts of the district.

**1980**

**Stone v. Graham**

**1st Amendment, Establishment of Religion.** Kentucky statute requiring the posing of the Ten Commandments in all public school classrooms in unconstitutional. Per curiam.

**Owen v. City of Independence**

**Section 1983.** A municipality cannot assert the good faith of its officers as a defense to liability.

**Pearl v. Regan**

**1st Amendment, Establishment of Religion.** New York statute that provides for cash reimbursement to private religious schools to cover cost of administering and grading of state written tests does not violate the First Amendment.

**1981**

**Texas Dept. of Comm. Affairs v. Burdine**

**Title VII of Civil Rights Act of 1964.** After the plaintiff has proved a prima facie case of employment discrimination, the employer bears only the burden of "explaining clearly the non-discriminatory reasons for its actions." The burden of "persuasion" remains on the plaintiff.

**Widmar v. Vincent**

**1st Amendment, Establishment of Religion/Free Speech.** A college that maintains a "limited open forum" for student groups violates free speech rights of members of a religious club by refusing permission to meet because of the religious content of the students' speech. An "equal access" policy would not have the "primary effect" of establishing religion.

**Penhurst State School & Hospital v. Halderman**

**14th Amendment, Spending Clause.** Developmentally Disabled Assistance and Bill of Rights Act did not create substantive rights to "appropriate" treatment in the "least restrictive environment." Legislation enacted pursuant to the spending clause is "much in the nature of a contract" and terms must be unambiguous and state must voluntarily and knowingly accept them.

**1982**

**Mississippi University for Women v. Hogan**

**14th Amendment, Equal Protection.** Developmentally Disabled Assistance and Bill of Rights Act did not create substantive rights to "appropriate" treatment in the "least restrictive environment." Legislation enacted pursuant to the spending clause is "much in the nature of a contract" and terms must be unambiguous and state must voluntarily and knowingly accept them.

**1982**

**Mississippi University for Women v. Hogan**

**14th Amendment, Equal Protection.** The state's policy of excluding males from the one single-sex nursing school in the violates the equal protection clause.

**Washington v. Seattle School Dist. No. 1**

**14th Amendment, Equal Protection.** A voter-initiated statute usurping the traditional authority of local school board which had voluntarily enacted a busing desegregation plan is unconstitutional because the statute does more than merely repeal existing desegregation orders. It is racially discriminatory and burdens local authority to integrate schools.

**Crawford v. L.A.**

**14th Amendment, Equal Protection.** Voter initiative that prevents state courts from imposing mandatory busing as a judicial remedy unless their had been a finding of a violation of the Federal Equal Protection clause is "racially neutral" and does not violate the Constitution. States may recede from a decision to do more than the fourteenth amendment requires.

**Hendrick Hudson Central School Dist. v. Rowley**

**Education for All Handicapped Children Act.** School district need not provide to handicapped children the "best" education available, as long as it is "meaningful" and procedural requirements of the Act are followed.

**Plyler v. Doe**

**14th Amendment, Equal Protection.** State violated constitutional rights of nondocumented aliens by charging them up to $1000 to attend the state's "free" public schools.

**North Haven Board of Education v. Bell**

**Title IX of the Education Amendments of 1972.** The Department of Health, Education, and Welfare did not abuse its authority by adopting regulations which prohibit discrimination in employment.

**1983**

**Bell v. New Jersey and Pennsylvania**

**Title I of the elementary and Secondary Education Act.** The government may recover from sites misused funds advanced under Title I.

**Mueller v. Allen**

**1st Amendment, Establishment of Religion.** Minnesota statute allowing deductions from state income tax for educational expenses incurred by parents of elementary and secondary school students, including those in religious schools, does not violate the First Amendment.

**Martinez v. Bynum**

**14th Amendment, Equal Protection.** Texas statute permitting school districts to deny tuition free admission to its public schools for minors living apart from "parent, guardian or other person having lawful control of him" is a bona fide residency requirement and does not violate the Equal Protection clause.

**Perry Educ. Association v. Perry Local Educ. Association**

**1st Amendment, Free Speech.** Allowing exclusive use of teachers' mailboxes to one union because of its status as the exclusive bargaining representative for the teachers does not violate free speech rights of members of the other union.

**Connick v. Myers**

**1st Amendment, Free Speech.** Employee's action in distributing survey to coworkers concerning office working conditions was not protected speech because it was a matter of personal interest rather than of "public concern." "Public concern" is determined by the content, form and context of the statement.

**1984**

**Irving I.S.D. v. Tatro**

**Education for All Handicapped Children Act.** School district must provide "clean intermittent catheterization" to handicapped children as a "related service", because the child cannot remain in school during the day without it.

**Grove City College v. Bell**

**Title IX of the Education Amendments of 1972.** The receipt of student financial aid by a college subjects only the financial aid department to title IX because the nondiscrimination requirements apply only to those parts of the institution that receive federal funding directly. Civil Rights Restoration Act overturned this decision.

**Smith v. Robinson**

**Education for All Handicapped Children Act.** Plaintiffs cannot recover attorneys' fees under section 1988 because Congress intended the EAHCA to be the exclusive avenue for vindicating an equal protection claim. The Handicapped Children's Protection Act overturned this decision.

**Migra v. Warren City School Dist.**

**Section 1983.** A judgment in a state action on a breach of contract claim has the same preclusive effect in a Federal Court under Section 1983 that it would have in a state court.

**1985**

**Aguilar v. Felton**

**1st Amendment, Establishment of Religion.** New York City school district violated the Constitution by placing public school teachers in private religious schools to provide remedial services under Chapter I of the Education Consolidation and Improvement Act.

**School Dist. of Grand Rapids v. Ball**

**1st Amendment, Establishment of Religion.** School district violated Constitution by paying private religious school teachers to teach private school students on the premises of the private school and by sending **public school teachers to the private schools to teach supplemental courses.**

**Wallace v. Jaffree**

**1st Amendment, Establishment of Religion.** Alabama's "moment of silence" statute establishes religion because it was passed with the intent to bring back prayer to the public schools.

**Burlington School Committee v. Department of Educ. of Mass.**

**Education for All Handicapped Children Act.** Parents may recover tuition reimbursement when they place their handicapped child in a private school, if it is later held that the former placement was not "appropriate."

**Webb v. Board of Educ. of Dyer County**

**Section 1988.** A "prevailing" plaintiff does not have the right to attorneys' fees for work done a an optional state administrative proceeding. Proceedings established by state

law to enforce tenure rights "are not any part of the proceedings to enforce Section 1983."

**Bennett v. Kentucky Dept. of Educ.**

**Title I of Elementary and Secondary Education Act.** State's "readiness program" under which Title I funds paid all costs of basic education of students in the classes violated the "supplement" provision of the Act and the good faith or "substantial compliance" of the grantee does not affect liability of the grantee for refund.

**Cleveland Bd. of Educ. v. Loudermill**

**14th Amendment, Due Process.** Public employees have the right to procedural due process prior to termination of tenured employment.

**New Jersey v. T.L.O.**

**4th Amendment.** The Fourth Amendment applies to public school searches but school officials need not show "probable cause." search is justified by "reasonable suspicion' that student violated the law or school rules.

**Lawrence county v. Lead-Deadwood School Dist. No. 40-1**

**Payment in Lieu of Taxes Act.** South Dakota statute requiring local governments to distribute funds under the Act to school districts and other entities in the same proportions general state aid, violates the Act. The supremacy clause precludes the state from depriving local governments of the discretion afforded them under the Act.

**Garcia v. San Antonio Metro. Transit Authority**

**10th Amendment.** The Tenth Amendment does not preclude Congress from subjecting public bodies to the minimum wage and overtime provision of the Fair Labor Standards Act. This case reverses the 1976 case of National League of Cities v. Usery.

**1986**

**Evans v. Jeff D.**

**Section 1988.** Trial court is not prohibited from approving a proposed settlement in a civil rights class action case which offers relief that is conditioned upon the waiver of attorney's fees.

**Ansonia Bd. of Educ. v. Philbrook**

**Title VII of Civil Rights Act of 1964.** An employee need not accommodate an employee's religious beliefs by accepting the accommodation preferred by the employee. Employer need only offer "a reasonable accommodation."

**Pembaur v. Cincinnati**

**Section 1983.** A single instance can be characterized as official governmental policy for purposes of holding city liable for the act of a county prosecutor (who under state law had authority to make county policy) in violating Fourth Amendment rights of the plaintiff.

**Bethel School Dist. No. 403 v. Fraser**

**1st Amendment, Free Speech.** School principal did not violate free speech rights of student by punishing student for using sexual innuendo in a speech during a school sponsored assembly. First Amendment does not prevent school officials from determining that student's speech "would undermine the school's basic educational mission."

**Chicago Teachers Union v. Hudson**

**1st Amendment, Free Association.** Union violates constitutional rights of employees by requiring payment of union dues (part of which is used for political purposes) and requiring dissenters to follow a "rebate" procedure. Union must justify its shop fee charged employees and due process procedure must assure a prompt decision rom an impartial decisionmaker.

**Memphis Comm. School Dist. v. Statchura**

**Section 1983.** In a suit by a teacher arising out of free speech violation, damages cannot be based on the abstract "value" or "importance" of the constitutional right.

**Meritor Sav. Bank, FSB v. Vinson**

**Title VII of Civil Rights Act of 1964.** Title VII bars sexual harassment that creates a hostile working environment, regardless of economic loss. Plaintiff must show that advances were "unwelcome," but claim is not foreclosed by plaintiff's voluntary submission to advances.

**Waggant v. Jackson Bd. of Educ.**

**14th Amendment, Equal Protection.** Neither societal discrimination nor the role model theory alone justifies school district affirmative action policy setting racial quotas for layoffs.

**Daniels v. Williams**

**14th Amendment, Due Process.** Due process clause is not implicated by the negligent act of public official "causing unintended loss of life, liberty or property."

**Bender v. Williamsport Area School Dist.**

**Standing to Sue.** Only the school board itself, not an individual school board member, has standing to appeal a decision.

**1987**

**Edwards v. Augillard**

**1st Amendment, Establishment of Religion.** Alabama statute requiring that teaching of evolution be balanced by teaching of "creation science' ruled unconstitutional because it did not have a secular purpose.

**School Board of Nassau County v. Arline**

**Section 504.** A person with a history of impairment with a contagious disease is protected by Section 504. Employers are not required to find another job for the employee but cannot deny any alternative reasonable available under the employer's existing policies.

**1988**

**St. Louis v. Praprotnik**

**Section 1983.** In absence of a policy or practice of retaliation against grieving employees, the municipality is not liable for retaliatory acts of a supervisor where policymakers have retained the right to review the supervisor's actions.

**Watson v. Fort Worth Bank and Trust**

**Title VII of Civil Rights Act of 1964.** Plaintiffs need not prove intent to discriminate where the application of subjective criteria, such as supervisor interviews, has a disproportionate effect on minorities.

**Honig v. Doe**

**Education for All Handicapped Children Act.** A violent or disruptive handicapped child cannot be suspended for more than 10 days without first complying with the change in placement procedures of the Act unless a court directs otherwise.

**Hazelwood School Dist. v. Kuhlmeir**

**1st Amendment, Free Speech.** School does not violate free speech rights of students by exercising control over style and content of school sponsored student newspapers if the actions are reasonably related to legitimate pedagogical concerns.

**1986**

**National Treasury Employees Union v. Von Raab**

**4th Amendment.** Testing urine for drugs is a "search" subject to the Fourth Amendment. "Reasonable suspicion" standard not applicable to customs officials who are engaged in drug interdiction, carry guns and whose use of drugs would endanger public safety.

**Skinner v. Railway Exec. Association**

**4th Amendment.** Testing urine of railroad employees after an accident does to violate Constitution because privacy interests are balanced by "special needs" of the government.

**Jett v. Dallas I.S.D**

**Section 1981.** Section 1983 is the exclusive remedy against a public entity for damages resulting from a civil rights violation. Section 1981 applies only to private persons.

**Wards Cove Packing co. v. Antonio**

**Title VII of Civil Rights Act of 1964.** Plaintiffs must prove that the application of a particular policy caused statistical disparities in the work force.

**Texas State Teachers Association v. Garland I.S.D.**

**Section 1988.** A plaintiff "prevails" for purpose of receiving attorneys' fees for plaintiffs success "materially altered" the relationship between the parties on a "significant" issue.

# APPENDIX B

## CONSTITUTIONAL PROVISIONS AND STATUES COVERED BY THE CASES

**First Amendment**-protects the right to free speech and free exercise of religion, prohibits the establishment of religion.

**Fourth Amendment**-prohibits unreasonable searches and seizures.

**Eighth Amendment**-prohibits cruel and unusual punishment.

**Tenth Amendment**-provides that powers not delegated to the U.S. or prohibited by it reside in the several states.

**Fourteenth Amendment**- provides for state sovereign immunity.

**Due Process Clause**-prohibits the taking of life, liberty or property without due process of law. Includes both procedural (notice and hearing or other process) and substantive (fundamental rights such as the right to privacy cannot be taken even if proper procedures are followed).

**Equal Protection Clause**-no person may be deprived of equal protection of the laws.

**Education for All Handicapped Children Act (20 U.S.C. 1401 et seq.)**-funding statute. Requires grantees to provide all handicapped children a "free appropriate public education" in the "least restrictive environment."

**Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c)**-gives the United States the authority to sue to protect rights guaranteed by Title VI.

**Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d)**-prohibits discrimination on the basis of race, color or national origin in federally assisted programs activities.

**Title VI of the Civile Rights Act of 1964 (42 U.S.C. 2000e)**-prohibits discrimination on the basis of race, color or national origin or sex.

**Age Discrimination in Employment Act (29 U.S.C. 621-634)**-prohibits discrimination on the basis of age against anyone over the age of 40.

**Title IX of the Education Amendments of 1972 (20 U.S.C. 794)**-prohibits discrimination on the basis of sex in federally assisted education programs and activities.

**Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)**-prohibits discrimination against any otherwise handicapped person in federally assisted programs and activities.

**Section 1983 (42 U.S.C. 1983)**-provides a damages remedy against any person who while action under color of law deprives another of rights secured by the Constitution and laws.

**Section 1981 (42 U.S.C. 1981)**-protects the right of all persons to make and enforce contracts and enjoy other rights in the same manner as "white citizens."

**Section 1988 (42 U.S.C. 12988)**-allows "prevailing" parties in suits brought under section 1983 and certain other laws to receive attorneys fees.

**Payment in Lieu of Taxes Act (31 U.S.C. 6901-5904)**-Funding statute to compensate localities for loss of property taxes from federal lands.

**Title I of the Elementary and Secondary Education Act (ESEA)(20 U.S.C. 2701 et seq.)**-funding statute for the benefit of disadvantaged students.

**Voting Rights Act (42 U.S.C. 1971 et seq.)**-prohibits discrimination and requires submission to preclearance procedures before instituting changes in voting procedures where there has been past discrimination.

**Emergency School Aid Act (ESAA) (20 U.S.C. 1601-1619)**-Funding statute to provide funds for desegregation.

# APPENDIX C

## NORTH CAROLINA LITIGATION UNDER SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

### STATUTORY PROVISIONS

**42 U.S.C. SECTION 1973c**

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973c, prohibits the enforcement in any State or political subdivision covered by Section 5 of any voting qualification or perquisite, standard, practice, or procedure different from that in force or effect on the date used to determine the jurisdiction's coverage, until approval is obtained from either the United States District Court for the District of Columbia or the Attorney General.

**42 U.S.C. SECTION 1973b(b)**

Section 4(b) of the Act, 42 U.S.C. Section 1973b(b), defines a "covered jurisdiction" for purposes of the Act. Generally, a jurisdiction is covered by Section 5 if on November 1, 1964, it utilized a literacy test or similar device and if less than half of the persons of voting age were registered or voted in the 1964, 1968, or 1972 presidential elections.

### PRECLEARANCE OF CHANGES IN ELECTORIAL SYSTEMS

**Clayton v. North Carolina State Board of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).**

Clayton involved a suit under Section 5 to enjoin Chapter 1039 of the North Carolina Sessions Laws of 1969,which amended N.C.G.S. Section 163-147 to provided that no person shall do any electioneering within the voting place or within 500 feet thereof in certain counties. The court enjoined that amendment's enforcement, holding that it constituted a "standard, practice, or procedure" under Section 5 and, thus, was inoperable in covered jurisdictions because it had not been submitted for preclearance.

**Wilson v. North Carolina State Board of Elections, 317 F. Supp. 1299 (M.D.N.C. 1970).**

WILSON involved a Section 5 challenge to invalidate a Rotaitorn Agreement, executed pursuant to N.C.G.S. Section 163-116, which rotated state senatorship among a three-county senatorial district such that Democratic Party members who resided in each county would have no vote in the primary elections for a state senator in certain years from 1969-1975. The court held that Section 163-116 was not subject to preclearance because its enactment pre-dated the enactment of Section 5, but found that because the Agreement had the force and effect of a legislative enactment by virtue of N.C.G.S. Section 163-116, it was subject to Section 5 preclearance.

**United States v. Onslow County, 683 F. Supp. 1021 (E.D.N.C. 1988).**

Pursuant to local legislation, in 1970 Onslow County implemented a new method election for the County Commissioners but failed to seek preclearnace of the changes until 1987. The court held that the voting changes were subject to Section 5, that all elections held since November 1, 1964, were unlawful because they were conducted under unprecleared changes, and that all terms of office should expire simultaneously at the next election.

**PRECLEARANCE OF CHANGES INVOLVING JUDICIAL ELECTIONS**

**Haith v. Martin, 618 f. Supp. 410 (e.d.n.c. 1985) ("Haith I") and Haith v. Martin, 643. Supp. 253 (E.D.N.C. 1986) ("Haith II").**

Haith I established that Section 5 reaches judicial elections. Haith II stands for the proposition that judicial elections held pursuant to statutes which pre-date the Voting Rights Act, which have not become an integral part of post-Act voting procedures, and which do not lead to a retrogression in the voting rights privileges of racial minorities are not violative of Section 5.

**PRECLEARANCE OF CHANGES INVOLVING ANNEXATIONS**

**McDowell v. Edminsten, 523 F. Supp. 416 (E.D.N.C. 1981).**

McDowell involved a suit to enjoin the City of New Bern from prohibiting plaintiffs from participating in elections while the city sought to satisfy the Attorney General's objection to an annexation. The court held that the Attorney General's objection to an annexation. The court held that the Attorney General's standing objection warranted denial of injunctive relief. McDowell makes clear that annexations require preclearance. In Moore v. Swinson, 58 N.C. App. 714, 718, 194 S.E. 2d 381, 383 (1982("[W]e hold that [Section 5] .

. . preempts all other provision regarding the right of those annexed to vote in the 11 August bond referendum.").

**PRECLEARANCE OF CHANGES INVOLVING CONSTITUTIONAL AMENDMENTS**

**Cavanagh v. Brock, 577 F. Supp. 176 (E.D.N.C. 1983).**

Cavanagh involved 1968 amendments to the North Carolina Constitution which provided in art that "'[n]o county shall be divided in the formation of senate . . . [or] representative district.' N.C. Const. Art. II, Sections 3(3) & 5(3)." The Attorney General interposed an objection to the 1968 amendments insofar as the affected the forty North Carolina counties subject to Section 5. the court held that t"the 1968 amendments had no force or effect, statewide, once the Attorney General had interposed an objection with respect to those forty counties subject to section 5 preclearance."

**NORTH CAROLINA CASES UNDER SECTION 2 OF THE VOTING RIGHTS ACT**

**Johnson v. Halifax county, 594 F. Supp. 161 (E.D.N.C. 1984).**

While a voting practice that was adopted or has been maintained for racially discriminatory reasons would violate 2, a voting practice that "results" in racial vote diluting also would violate Section 2, regardless of the intent of the defendants. The "results" test focuses judicial inquiry on objective factors concerning the "totality of circumstances" bearing on the present ability of minorities effectively to participate in the political process.

**Gingles v. Edmisten, 590 F. Supp. 345 (E.D.N.C. 1984), aff'd in part, rev'd in part on other grounds, sub nom., Thornburg v. Gingles, 478 U.S. 196 /s,/ct, 2752m 92 L.Ed. 2d 25 (1986).**

Gingles involved the redistricting plan enacted in 1982 by the General Assembly of north Carolina for the election of members of the Senate and House of Representative of the Legislature. The gravamen of the plaintiffs' claim was that the use of multi-member districts diluted black voting strength, and therefore violated Section 2, by submerging black voting minorities in some areas and by fracturing concentrations of black voting majorities in others. The three-judge district court agreed with and found for the plaintiffs.

Gingles v. Edminsten is the vehicle through which the United States Supreme Court ultimately defined the parameters of Section 2 in Thornburg v. Gingles, supra. To prove vote

dilution under Section 2 after Gingles, the plaintiff must satisfy, inter alia, three threshold proof requirements: (1) it is sufficiently geographically compact to constitute a majority in a single-member district; (2) it is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it -- in the absence of special circumstances, such as the minority candidate running unopposed . . ., usually to defeat the minority preferred candidate. Gingles, 478 U.S. at 50-51 & nn. 15-17, 106 S.Ct. at 2766-67 & nn. 16-17. See also Collins v. City of Norfolk, Virginia, 816 F.2d 932, 935 (4th Cir. 1987) (recognizing Gingles preconditions as "essential" to proof to vote dilution).

**McGhee v. Granville County, North Carolina**, 860 F.2d 110 (4th Cir. 1988).

McGhee involved an action in which the County stipulated that the system did not comply with the requirements of Section 2 of the Voting Rights Act. The County therefore proposed a single-member district electoral plan containing seven districts, with members serving staggered terms, thereby both abandoning the at-large system and expanding board membership from five to seven.

The plaintiffs proposed an allegedly superior "limited voting plan," under which the board would be composed of seven members elected concurrently on a county wide at-large basis, with voters allowed to vote for any three or fewer candidates as they chose. The district court rejected the County's plan and adopted a modified version of the plaintiffs' plan.

The Fourth Circuit Court of Appeals reversed, noting that the County should be given the first opportunity to devise an acceptable plan, and that if the remedial plan fails to meet the same standards applicable to an original challenge of a legislative plan, then a federal court may adopt an acceptable plan. The court of appeals remanded with instructions to the district court to enter an appropriate order approving and implementing the County's proposed remedial plan.

**APPENDIX D**

# CODE OF ETHICS

## For School Board Members

**AS A MEMBER OF MY LOCAL BOARD OF EDUCATION I WILL STRIVE TO IMPROVE PUBLIC EDUCATION, AND TO THAT END I WILL:**

Attend all regularly scheduled board meetings insofar as possible, and become informed concerning the issues to be considered at those meetings;

Recognize that I should endeavor to make policy decisions only after full discussion at publicly held board meetings;

Render all decisions based on the available facts and my independent judgment, and refuse to surrender that judgment to individuals or special interest groups;

Encourage the free expression of opinion by all board members, and seek systematic communications between the board and students, staff, and all elements of the community;

Work with other board members to establish effective board policies and to delegate authority for the administration of the schools to the superintendent;

Communicate to other board members and the superintendent expressions of public reaction to board policies and school programs;

Inform myself about current educational issues by individual study and through participation in programs providing needed information, such as those sponsored by my state and national school boards associations;

Support the employment of those persons best qualified to serve as school staff, and insist on a regular and impartial evaluation of all staff;

Avoid being placed in a position of conflict of interest, and refrain from using my board position for personal or partisan gain;

Take no private action that will compromise the board or administration, and respect the confidentially of information that is privileged under applicable law; and

Remember always that my first and greatest concern must be the educational welfare of the students attending the public schools.


Board Member Signature

Date

# APPENDIX E

October 17, 1991

To: Board Members and Superintendents

From: Ed Dunlap

Re: New Training Requirements for Board Members

We have received several inquiries from board members and superintendents concerning the new legislation requiring training for school board members. The legislation reads as follows:

> "115C-50. All members of local boards of education shall receive a minimum of 12 clock hours of training annually. The training shall include but not be limited to public school law, public school finance, and duties and responsibilities of local boards of education. The training may be provided by the North Carolina School Boards Association, the Institute of Government, or other qualified sources at the choice of the local board of education."

As part of our record keeping for the NCSBA Academy for School Boardsmanship, we will assign a clock hour value to our various training activities in addition to our standard point value. The points and hours accumulated during the Academy year, which runs from July to June, will be reported to board members each August so that we may verify our records.

We have assigned the following contact hour values to meetings which we produce. In the event that you attend other training meetings which we do not produce please let us know so that you may be credited with the proper points and hours.

| | |
|---|---|
| IOG Law Conference | 3 hours |
| NCSBA District Meetings | 4 hours |
| NCSBA Special Issue Seminars | 4 hours |
| Southern Region Convention | 10 hours |
| New Board Member Seminar | 10 hours |
| Winter Leadership Conference | 10 hours |
| NCSBA Annual Conference | 16 hours |
| NSBA Convention | 16 hours |

If you have any questions please give me a call.