



Comparing Roles: The Superintendent and the Board of Education

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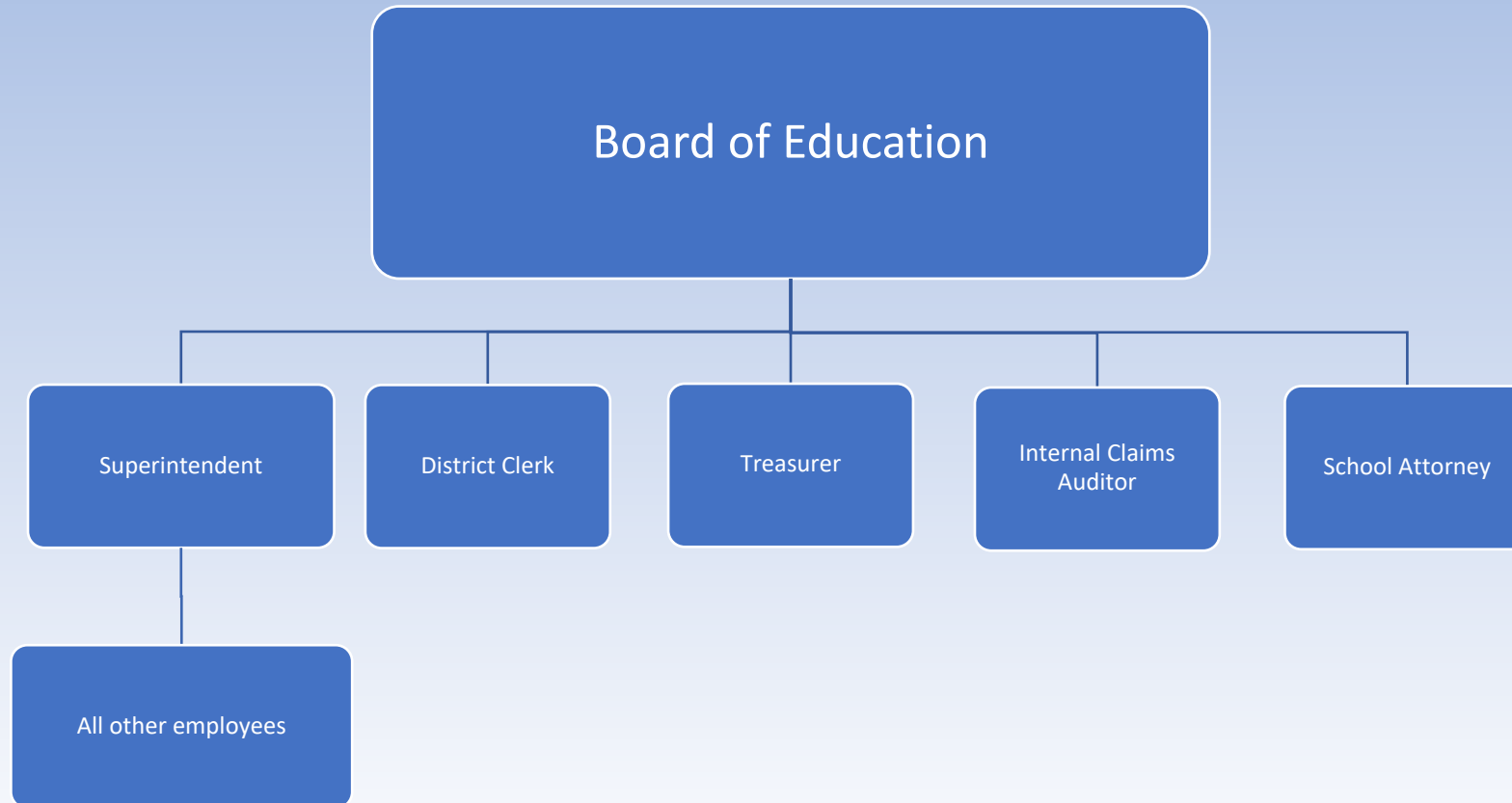
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Overview of the Roles of the Board and the Superintendent

- The Board's principal duty is to establish policies while delegating day-to-day operations to the Superintendent, who acts as the chief executive officer, enforces and implements the Board's policies, and (as requested or necessary) develops and implements regulations in furtherance of those policies.
- There are certain Board duties as well that fall with an executive function.

Basic School District Organizational Chart



The Board of Education

The Officers of the District include the Board members, the District Clerk, the Treasurer, the Claims Auditor and where there's a tax collection function, the Tax Collector.

Board of Education – Generally

- The Board of Education is the corporate body that oversees the District's affairs. *Education Law §1701*
- Board members are generally elected for three, four, or five-year terms of office.
- Positions are unsalaried.

Board of Education – Generally (cont'd)

- The duties and powers of the Board are outlined in statutes, regulations, and District policies. (e.g.; Education Law §1709)
- Some powers are implied from the Board's enumerated powers. (Education Law §1709[13]&[33])
- Board members acting as individuals have no authority over personnel or school affairs. (*Appeal of Balen*, 40 Ed. Dept. Rep. 479 (2001))

When do Board members have the authority to act on behalf of the District?

- Board members have legal authority for the conduct of the District's schools only when acting:
 - **As a body** (i.e., official action taken by the Board following proper voting procedures); and
 - **In a properly convened session** (i.e., following requirements for regular and special meetings, executive session, and notice of meeting requirements)
 - [Note: BOE Bylaws typically describe details about agenda setting, conduct of public meetings and the speaking forum at such meetings]

Some Important Statutory Duties for Board Members

- Education Law sets forth the powers and duties of the Board. These are some of the most important duties prescribed by statute:
 - Prescribe the course of study by which pupils of the schools shall be graded and classified.
 - Prescribe textbooks to be used in schools.
 - Raise the money (by tax) to pay the salary of the teachers (Subject to the strictures of the Tax Levy Limit Law – Education Law §2023-a)
 - Contract with and employ qualified teachers and other employees,(Education Law §1709(16) and for tenure bearing positions, upon the superintendent’s recommendation. (Education Law §3012)

Important Statutory Duties of the Board (cont'd)

- Remove a Board member by quorum vote for official misconduct based upon due process principles.(§1709[18]).
- Provide school health services.
- Provide transportation, home-teaching or special classes for physically or mentally handicapped and delinquent children.

*Education Law §§ 1709 & 2503**

**Applicable in Small City School Districts*

Important Statutory/Regulatory Duties (cont'd)

- *Education Law § 3214*: Hear appeals (in executive session) of suspension of students as may be prescribed in the Code of Conduct regarding short and long term suspensions from regular instructional classes.
- *8 NYCRR § 100.2(o)(1)(vi)* – The Board must annually review the performance of the superintendent according to procedures developed by the school board in consultation with the superintendent. The evaluation procedures must be filed in the district office and available for public review no later than September 10 of each year.

Some Important Statutory Duties Re: Special Education

- Conduct a census to locate and identify students with disabilities who reside in the district.
- Establish a register of classified students who are entitled to attend the public schools of the District or eligible to attend a preschool program.
- Review the recommendation of the CSE/CPSE and either arrange for the placement or remand to the same or a different CSE/CPSE for reconsideration.

8 NYCRR § 200.2

Important Statutory Duties – Implied Powers

- The Education Law also grants Boards all powers necessary to exercise powers granted expressly or by implication and to discharge duties imposed expressly or by implication.
- (The residual authority provision of the Education Law§1709[33])

Examples of “Implied Powers” of the Board

- Phillips v. Maurer, 67 N.Y.2d 672 (1986).
 - Power to control educational affairs of district and to take all measures reasonably necessary to accomplish its duties implies the power to make reasonable expenditures to communicate board’s position on budget matters.
 - Although the board has the authority to purchase advertisements in newspapers for the purpose of providing information necessary to educate the public, it may not take a partisan position by urging the adoption of the budget or endorsing a candidate for the Board. (Appeal of Weaver, 28 Ed. Dept. Rep. 183[1988])

Examples of “Implied Powers” of the Board (cont’d)

- Young v Board of Education, 35 N.Y.2d 31 (1974).
 - Faced with spiraling operating costs and ever-increasing demands on their tax base, school districts must have sufficient latitude within the law to manage their affairs efficiently and effectively.
 - This implies, where appropriate, the power to consolidate and abolish positions in good faith for economic reasons.

Board Member “Duty of Care”

- According to the Board of Regents, a Trustee must act in good faith and exercise the degree of diligence, care, and skill an ordinary prudent person would employ under similar circumstances in a like position.

“Statement on the Governance Role of a Trustee or Board Member”, at p. 4.

Trustees' Duty of Care

Specifically, Trustees should:

- Regularly attend and participate in Board meetings and assigned committee meetings;
- Read, review, and inquire about materials that involve the institution (e.g., policies and plans);
- Have a fiduciary responsibility for the assets, finances, and investments of the District, and exercise due diligence, care and caution “...as if handling one’s own personal finances”;
- A six year statute of limitations applies to a breach of fiduciary duty. (*Roslyn UFSD v. Barkan*, 16 N.Y.3d 643[2011])

Finding a Balance between Micromanaging and being a “Rubberstamp”

- According to the Board of Regents:
 - “... (M)embers need to avoid meddling in managing daily affairs ...”
 - “The board needs to support the institution’s management but must also govern by holding the (CEO) accountable for the institution’s operations and service to the public.”
 - “... Members exercise that (governance) role by hiring a CEO to manage the operation of the institution and evaluating his/her overall performance in providing services to the public.”

“Statement on the Governance Role of a Trustee or Board Member,” at p. 8.

Reviewing Employee Personnel Records

- Board members may review employee personnel records only for purposes of aiding the members to fulfill their legal responsibilities (consistent with Part 84 of the Commissioner's Regulations):
 - In making decisions related to employee personnel matters (appointments, assignments, promotions, demotions, remuneration, discipline, or dismissal);
 - To aid in the development and implementation of personnel policies; or
 - For such other uses as are necessary to enable the Board to carry out legal responsibilities.

Process to Review Employee Personnel Records: 8 NYCRR Part 84

- The Superintendent or District Clerk is requested in advance to present the file at a regularly scheduled open meeting of the Board;
- The records are reviewed during an executive session following a vote to move into executive session for that purpose using an employee number;
- One or more members may require the file to be produced in executive session based upon a specifically articulated business purpose. *Appeal of Meyer & Pavalow*, 46 Ed. Dept. Rep. 43(2006)

The Superintendent

The Superintendent of Schools serves as the chief executive officer of the District and may have a contract of employment based upon the nature of the school district (i.e. Central, Union Free, Small City, etc.)

The Superintendent – Generally

- The Superintendent manages (e.g., administers and operates) the school district consistent with the directives and policies of the Board of Education.
- The salary of the superintendent is determined by the Board, which “may” enter into the contract with the superintendent for a term not less than three nor more than five years in union free and central school districts. A term of up to five years in the case of a small city school district. (Education Law §1711 & 2507)

Statutory Duties of the Superintendent

- Have the right to speak on all matters before the Board (but not vote)
- Enforce all provisions and all rules and regulations relating to the management of the schools and other educational, social, and recreational activities under the direction of the Board.
- Prepare the content of each course of study authorized by the Board.
 - Content of courses shall be submitted to the Board for its approval.

Statutory Duties of the Superintendent (cont'd)

- Recommend suitable lists of textbooks to be used in the schools.
- Supervise and direct district personnel, subject to the Board's oversight authority.
- Supervise and direct the enforcement and observance of courses of study, the examination, and the promotion of pupils, etc.

Education Law §§ 1711 & 2508

Superintendent – Board Policies

- Board policies concerning additional duties of the Superintendent will vary from district to district, but will generally cover the following:
 - Relationship with the Board
 - Educational Direction and Leadership
 - Personnel
 - Financial Management
 - Facilities Management
 - Community Relations
 - Personal Qualities and Growth
 - Management Functions.

Note Re: Following Slides

- The following slides are examples of the types of provisions in district policies covering the duties and obligations of the Superintendent.
- District policies may differ, and it is important to review your District's policies and consult with counsel.

Superintendent Duties: Relationship with the Board

- Serves as **Chief Executive Officer** for the Board and implements Board policies.
- Assists Board President in **planning the meeting agenda** and attends all meetings at the Board's request.
- Provides continuous appraisal of **school policies** originating with the Board
- Has the **right to attend all Board meetings and speak to all issues before the Board** , except when the Board is discussing their performance and/or any appeal to the Board of a **Superintendent's decision.**

Superintendent Duties: Educational Direction and Leadership

- Develops **administrative regulations** for implementing Board policy.
- Ensures the **enforcement of all provisions of law, rules and regulations, and Board policy** relating to the management of the schools and other educational, social and recreational activities.
- Responsible for the **supervision of instruction** and shall bring to the school, in a leadership capacity, the best in educational thought and practice.
- On a continuing basis, **review and update the adequacy of the total educational program** of the school, and keep the Board informed of all changes in curriculum.

Superintendent Duties: Educational Direction and Leadership (cont'd)

- **Recommends** to the Board for its adoption all **courses of study, curriculum guides and textbooks** to be used in the schools. *See Education Law §1711(2)(d)*
- Recommends school attendance zones to the Board.
- Reports student conduct to the Board.

Superintendent Duties: Personnel (cont'd)

May temporarily suspend any employee for cause **pending the next board** meeting and shall promptly report such suspension to the members of the Board.

See Education Law §1711(2)(e)

Superintendent Duties: Personnel (cont'd)

Enters into collective bargaining agreements with labor unions representing District employees as the District's Chief Executive Officer as defined in the Taylor Law. *See Civil Service Law §201(10)*

Advises the Board in conjunction with the Board-designated negotiator(s), in all collective bargaining matters.

Summary Comparison: The Superintendent & the Board of Education

Superintendent

Chief Executive Officer of the School System

- Salary of the superintendent determined by the Board, which “may” enter into the contract with the superintendent for a term of not less than three nor more than five years.
- Recommends appointments of personnel to the Board.
- Prepares content for each course of study and submits to the Board for approval.

Board of Education

Corporate body that oversees and manages the District’s affairs

- Elected for three, four or five-year terms of office; position is unsalaried.
- Appoints teachers and other employees (for employees in tenure bearing positions-upon the recommendation of the superintendent)
- Approves courses of study.

Summary Comparison: The Superintendent & the Board of Education

Superintendent

Chief Executive Officer of the School System

- Supervises and directs assistant superintendents, principals, and teachers; transfers teachers; suspends employees for insubordination or other violations, which are reported to the board at the next meeting.
- Has the right to speak on all matters before the Board but does not have the right to vote on matters before the board.

Board of Education

Corporate body that oversees and manages the District's affairs

- Can enter into employment contracts and consultant agreements.
- Board evaluates the superintendent annually.

Summary Comparison: The Superintendent & the Board of Education

Superintendent

Chief Executive Officer of the School System

- Has no authority to commence legal proceedings on behalf of the school district.
- Has no authority to adopt policies.
- No restriction on the right of the superintendent to visit schools.

Board of Education

Corporate body that oversees and manages the District's affairs

- Can vote to authorize legal proceedings on behalf of the Board.
- Can vote to authorize legal proceedings on behalf of the district, consistent with the law.
- Board members can only visit schools for official purposes and only with the authorization of the Board.

Summary Comparison: The Superintendent & the Board of Education

Superintendent

Chief Executive Officer of the School System

- Positive recommendation for tenure from the superintendent is necessary for the Board to grant tenure.
- Superintendent conducts a hearing (or acts on the recommendation of a hearing officer) for the suspension of a student in excess of five school days.
- Has no direct role in the approval or implementation of recommendations of the CSE/CPSE.

Board of Education

Corporate body that oversees and manages the District's affairs

- Board grants teacher tenure; however, the Board has no authority to grant tenure absent a positive recommendation from the superintendent
- Board hears appeals (in executive session) of suspensions of students for more than five school days.
- Board implements the recommendations of the CSE/CPSE with regard to classification and placement (it can also send CSE/CPSE recommendations back with questions.)