

1. The Structure of the New York State School System

Legal Framework

1:1. What is the University of the State of New York?

The University of the State of New York consists of all public and private elementary and secondary schools in the state; all privately and publicly controlled institutions of higher education, including the schools in the State University of New York (SUNY) system; and all libraries, museums, and other educational and cultural institutions admitted to or incorporated by the University (§ 214). It is vested with broad regulatory powers and is governed by the Board of Regents. Its primary purpose is to encourage and promote education (§§ 201, 202; see also *Moore v. Board of Regents*, 44 N.Y.2d 593 (1978)).

The University of the State of New York should not be confused with SUNY, which was established in 1948 (§ 352). SUNY consists of 34 state-operated and statutory campuses and 30 community colleges. It is governed by a 16-member board of trustees: 15 are appointed by the governor with the advice and consent of the state Senate and one member is president of the Student Assembly of the State University (SASU), ex officio (§ 353(1)). The board of trustees appoints a chancellor who heads SUNY (§ 353(3)).

1:2. What is the general framework of New York State’s public education system?

The general framework of New York State’s public education system consists of several levels of authority and resembles a pyramid. The base, which carries the most authority, is the federal government. Its authority resides in the United States Constitution, federal laws and regulations, and federal court decisions. The next level, the state, relies on the New York State Constitution, state laws and regulations, including the rules of the state Board of Regents, regulations and decisions of the commissioner of education, and state court decisions.

Legal authority for and jurisdiction of school boards are at the top of the pyramid. As local entities, school boards have the narrowest band of authority and may set policy only in areas in which their jurisdiction is not superseded by federal or state authority.

1:3. What is the role of the federal government regarding the operation of school districts in New York State?

The Tenth Amendment to the United States Constitution leaves the function of education to the individual states by providing that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Although not as common as state laws, federal statutes place certain responsibilities on local school districts. For example, under the federal Individuals with Disabilities Education Act, districts have certain duties with regard to providing education to students with disabilities (20 USC § 1400 *et seq.*). The No Child Left Behind Act, which constitutes the 2001 Reauthorization of the Elementary and Secondary Education Act (20 USC §§ 6301–7941), establishes certain national standards and testing requirements.

Federal regulations established by federal agencies also stand as the law of the land unless challenged and overturned by federal courts, or changed or overruled by the particular agency.

1:4. What is the role of the state government regarding the operation of school districts in New York State?

The basis for free public education in New York State is contained in article 11, section 1, of the state constitution, which declares that the Legislature “shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.” Article 11 provides the legal authority given to the Board of Regents and to the Legislature to provide for the maintenance and support of public schools.

Both the governor and the Legislature propose and enact numerous statutes that affect education at the state level. The following statutes in the Education Law specify the authority of the state’s school boards:

- Section 1604, for trustees of common school districts.
- Section 1709, for union free school board members.
- Section 1804, for central school district boards.
- Section 1950, for boards of cooperative educational services (BOCES).
- Articles 51, 52, and 52a, for city school district boards.

In addition, the state delegates powers to school districts as it does to municipalities. School districts are considered political subdivisions of the state government (*Burlaka v. Greece CSD*, 167 Misc.2d 281 (1996); *Koch v. Webster CSD*, 112 Misc.2d 10 (1981)).

Through the enactment of Article 56 of the Education Law, the state also provides for charter schools that operate as autonomous public schools independent of existing school districts. For further discussion on charter schools, see **chapter 33**.

1:5. What is the role of the New York State Board of Regents and the State Education Department regarding the operation of school districts?

The New York State Board of Regents and the State Education Department exercise the powers and functions delegated to them through the Education Law. They also establish policy by adopting rules and regulations within the limitations of state law (see **1:6–1:11**). These regulations have the authority of law unless they are overruled by decisions of the state’s courts or the Legislature, or until they are superseded by the promulgating agency (§§ 101, 101(a), 207; see also *Board of Educ. of Northport-East Northport UFSD v. Ambach*, 90 A.D.2d 227, *aff’d*, 60 N.Y.2d 748 (1982), *cert. denied*, 465 U.S. 1101 (1984); and *Van Allen v. McCleary*, 27 Misc.2d 81 (1961)).

In addition, all public elementary, middle, and secondary schools, other than charter schools, must be registered by the Board of Regents, and all are deemed to be admitted to the University of the State of New York (8 NYCRR § 3.32).

The New York State Board of Regents

1:6. What is the New York State Board of Regents?

The New York State Board of Regents is the governing body of the University of the State of New York. It was established by the state Legislature in 1784 and is the oldest continuous state educational agency in the United States.

The Regents exercise legislative functions over the state educational system, determine its educational policies, and, except as related to the judicial functions of the commissioner of education, establish rules for carrying out the state's laws and policies relating to education and the functions, powers, duties, and trusts granted to or authorized by the University of the State of New York and the State Education Department (§ 207).

The Regents also sponsor a Regents College Examinations (RCE) program. Through this nationwide, nontraditional program, adults earn credit toward college degrees in such areas as nursing, liberal arts, business, and technology.

1:7. What is the composition of the Board of Regents?

There are 16 members of the Board of Regents. Each is elected to a five-year term by a concurrent resolution of both houses of the state Legislature. One Regent is selected from each of the state's 12 judicial districts, and four Regents are chosen from the state at large (§ 202). There are no ex officio Regents; that is, members of the Regents do not serve simply by virtue of their holding an elected or appointed position (§ 202).

A Regent's term of office expires April 1. The Legislature's concurrent resolution electing a Regent must be adopted on or before the first Tuesday of the preceding March. Absent adoption of a concurrent resolution, both houses of the state Legislature must meet in a joint session on the second Tuesday in March to select a Regent by joint ballot (§ 202).

1:8. What are the Regents' powers and duties?

The Regents have broad authority over all the state's educational institutions (*Moore v. Board of Regents*, 44 N.Y.2d 593 (1978)). For example, they appoint the commissioner of education, who becomes the president of the University of the State of New York (§ 302; 8 NYCRR § 3.5). They establish and enforce educational and professional standards in the interests of the people of the state.

In the performance of these functions, the Regents are empowered to charter, register, visit, examine into and inspect any school or institution under the educational supervision of the state (§§ 215, 216, 2851(3)(c), 2853(1)(c), 2853(2), 2853(2-a)), to license practitioners in 38 major professions (§ 6504), and to certify teachers and librarians (§§ 3004, 3006).

The Regents meet monthly (except in August), usually in Albany. They serve without compensation, but are reimbursed for travel and other expenses. They elect their own chancellor and vice chancellor (§ 203).

1:9. Must an educational corporation obtain consent from the Regents to operate under an assumed name?

Yes. An educational corporation can operate under an assumed name only if it has first obtained the consent of the Board of Regents. To restrict the use of certain terms in corporate names that imply an educational principle and to exclude corporations or persons who are not permitted to do so, educational

corporations must file a copy of their assumed name certificate with the State Education Department (§ 219 (5)).

The New York State Education Department

1:10. What is the New York State Education Department?

The New York State Education Department (SED), under the direction of the commissioner of education, is the administrative arm of the University of the State of New York. It is charged with carrying out legislative mandates and the Regents' policies (§§ 101, 207, 305). The principal functions of SED are carried out within six major areas: Office of Management Services; Office of Cultural Education; Office of Elementary, Middle, Secondary and Continuing Education; Office of Higher and Professional Education; Office of the Professions; and Office of Vocational and Educational Services for Individuals with Disabilities. The Office of Elementary, Middle, Secondary and Continuing Education (EMSC) and the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) directly pertain to elementary and secondary education.

For more information about SED and its offices, contact SED at 518-474-3852, or via its general Web site at <http://www.nysed.gov> or the individual office Web sites, including, for example, <http://www.emsc.nysed.gov> (EMSC) and <http://www.vesid.nysed.gov> (VESID).

1:11. What is the function of the State Education Department?

The State Education Department (SED) is charged with the general management and supervision of all public schools and all the education work of the state (§ 101), from prekindergarten to graduate school, and is responsible for setting educational policy, standards, and rules. SED also supervises the state's nonpublic schools (§ 807; 8 NYCRR Parts 100, 125), oversees the 38 licensed professions (§§ 6500, 6501, 6504), provides vocational and educational services to people with disabilities (§ 4400; 8 NYCRR § 15.2), guides local government records programs (§§ 229, 230, 231), and operates the State Archives, Library, and Museum (§ 232; 8 NYCRR § 10.1).

The Commissioner of Education

1:12. Who is the commissioner of education?

The commissioner of education is the chief executive officer of the State Education Department and the Board of Regents (§§ 101, 301, 305(1); 8 NYCRR § 3.7; see **1:6–8, 1:10–11**).

1:13. What are the commissioner of education's powers and duties?

The commissioner of education's powers and duties are contained primarily in section 305 of the Education Law. They include, for example, enforcement of laws relating to the educational system, execution of all educational policies determined by the Board of Regents, issuance of regulations, general supervision of all schools and institutions subject to the provisions of the Education Law, grant and annulment of teaching certificates, approval of school transportation and cafeteria contracts, review of appeals and petitions pursuant to section 310, removal of school officers and withholding of state aid pursuant to section 306, and execution of such other powers and duties as determined by the Board of Regents.

1:14. What are the commissioner's regulations?

The commissioner's regulations are rules that govern how the schools, institutions, and other entities under the commissioner's jurisdiction are to be operated. They have the effect of law on the schools of the state unless the courts overturn them. The New York Department of State officially compiles and publishes commissioner's regulations, which can be found in Title VIII of the Official Compilation of Codes, Rules, and Regulations of the State of New York (8 NYCRR). They include, among other things, certification requirements for teachers, curriculum requirements, mandates on the building of schools, and standards for the various professions.

1:15. Can a school district apply for a waiver from regulation?

Yes. A school district can apply for a waiver from any regulatory mandate issued by the commissioner of education or other state agencies, provided the intent of the mandate can be achieved in a more cost-effective manner. State agencies have broad power to exempt a school district from regulatory mandates that would not compromise environmental quality, health, or safety concerns, or reduce any employee rights or benefits or violate a collective bargaining agreement (State Administrative Procedure Act § 204-a).

1:16. How is an appeal brought to the commissioner of education?

Any person believing himself or herself to be aggrieved by an official act of any officer or school authority, or by any action taken at a meeting concerning any matter under the Education Law or pertaining to the schools of the state, may appeal to the commissioner of education (§ 310). For example, that person must be aggrieved in the sense that he or she has suffered personal damage or injury to his or her rights (*Appeal of Goldin*, 43 Educ. Dep't Rep. 330 (2004); *Appeal of M.H.*, 43 Educ. Dep't Rep. 210 (2003); *Appeal of Simms*, 42 Educ. Dep't Rep. 50 (2002)). However, the Education Law does not authorize an appeal to the commissioner from actions taken by members of the staff of the State Education Department (*Appeal of New York Institute of Massage, Inc.*, 45 Educ. Dep't Rep. 495 (2006); *Appeal of Karpen*, 40 Educ. Dep't Rep. 199 (2000)). Such actions can only be challenged in court in an Article 78 proceeding (*Appeal of New York Institute of Massage, Inc.*).

All appeals to the commissioner must be brought within 30 days after the decision or act complained of, or from the time knowledge of the cause of the complaint came to the person appealing the decision. However, the commissioner, in his sole discretion, may excuse a failure to commence an appeal in a timely manner for good cause (8 NYCRR § 275.16). The party against whom an appeal is filed and served must answer the appeal within 20 days of service (8 NYCRR § 275.13).

The procedures regarding appeals to the commissioner are presently detailed in *Handbook I—Regulations of the Commissioner of Education Relating to Appeals and Other Proceedings Before the Commissioner and the State Review Officer* (State Education Department, rev. Sept. 1999), available from SED's Office of Counsel at 518-474-8927 or at <http://www.counsel.nysed.gov>. However, changes had been proposed at the time this publication went to press.

1:17. Are there any limitations on the commissioner's ability to review an appeal?

The commissioner will not determine moot or advisory questions but will determine only actual matters in controversy (*Appeal of D'Orazio and Carey*, 41 Educ. Dep't Rep. 292 (2002); *Appeal of D.M. and M.M.*, 41 Educ. Dep't Rep. 302 (2002); *Appeal of N.C.*, 40 Educ. Dep't Rep. 542 (2000); *Appeal of Eckert*, 40 Educ. Dep't Rep. 433 (2000); *Appeal of Doro*, 40 Educ. Dep't Rep. 281 (2000)).

The commissioner will not decide the constitutionality of a statute (*Appeal of St. Cyr*, 27 Educ. Dep't Rep. 351 (1988); *Matter of Van Druff*, 21 Educ. Dep't Rep. 635 (1982)) or violations of the Open Meetings Law, Freedom of Information Law, and the Family Educational Rights and Privacy Act (*Appeal of Barnett*, 40 Educ. Dep't Rep. 403 (2000); *Appeal of Instone-Noonan*, 39 Educ. Dep't Rep. 413 (1999); *Appeal of Razzano*, 39 Educ. Dep't Rep. 303 (1999); *Appeal of Tsu, Iannacone and Dunne*, 39 Educ. Dep't Rep. 84 (1999)).

In addition, the commissioner will not resolve “novel questions of constitutional law” in an administrative appeal (*Appeal of Almedina*, 33 Educ. Dep't Rep. 383 (1993); *Ware v. Valley Stream High*, 75 N.Y.2d 114 (1989)).

Furthermore, the commissioner will not substitute his or her judgment for that of a board or school official in any decision absent a showing that the decision is arbitrary, capricious, or contrary to law or the dictates of sound educational policy (*Appeal of Chan and Grogan*, 41 Educ. Dep't Rep. 178 (2001)).

Once an appeal has been decided, it will not be reopened by the commissioner unless it is established that there is new and material evidence that was not available at the time of the original proceedings or that the original decision was rendered under a misunderstanding of the facts (8 NYCRR § 276.8; *Application to Reopen the Appeal of D.H.*, 41 Educ. Dep't Rep. 283 (2002); *Appeal of Wroblewski*, 36 Educ. Dep't Rep. 294 (1997); *Appeal of Bach*, 34 Educ. Dep't Rep. 18 (1994); *Appeal of Strada*, 33 Educ. Dep't Rep. 666 (1994)).

1:18. Are the commissioner of education’s decisions reviewable by the courts?

Yes. The actions of the commissioner of education are subject to court review, the same as those of other state officials. The commissioner’s decisions are subject to review in the courts by means of a proceeding under Article 78 of the Civil Practice Law and Rules. The commissioner’s decisions are published in Education Department Reports (Educ. Dep't Rep.). Ordinarily they can be found in any county courthouse law library, or they can be obtained by writing directly to the State Education Department’s Publication Sales, Education Building, Room 309, 89 Washington Avenue, Albany, NY 12234, 518-474-3806. Currently, only some are available through the Web site of the State Education Department’s Office of Counsel at <http://www.counsel.nysed.gov>.

Local School Districts

Editor’s Note: For additional information about school districts, see A Guide to the Reorganization of School Districts in New York State (Albany, N.Y.: State Education Department, 1998).

1:19. What is a common school district?

A *common school district* is a school district first created by legislative action in 1812 to operate elementary schools (kindergarten through eighth grade). Even though they lack legal authority to operate a high school, common school districts remain responsible for ensuring a secondary education for their resident children.

A common school district is administered by either a sole trustee or a school board of three trustees (§ 1602(1)). The number of members of the board of trustees of a common school district may be increased or decreased as set forth in law (§ 1602; see **2:6**).