

1. 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. Bd. 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 an 18-member board of trustees: 15 of whom are appointed by the governor with the advice and consent of the senate, one of whom shall be the president of the student assembly of the state university (SASU) ex-officio and voting, one of whom shall be the president of the university faculty senate, ex-officio and nonvoting, and one of whom shall be the president of the faculty council of community colleges (FCCC), ex-officio and nonvoting ex-officio (§ 353(1)). The board of trustees appoints a chancellor who heads SUNY (§ 353(3) see also Exec. Law § 169).

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school boards have the narrowest band of authority and may set policy only in areas in which their jurisdiction is not superseded by federal or state authority.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 52-A, 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 (Sup. Ct. Monroe Cnty. 1996); *Koch v. Webster CSD*, 112 Misc.2d 10 (Sup. Ct. Monroe Cnty. 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 38**.

1:5. What are the roles 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 *Bd. of Educ. of Northport-East Northport UFSD v. Ambach*, 90 A.D.2d 227 (3d Dep’t 1982), *aff’d*, 60 N.Y.2d 748 (1982), *cert. denied*, 465 U.S. 1101 (1984); and *Van Allen v. McCleary*, 27 Misc.2d 81 (Sup. Ct. Nassau Cnty. 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).

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. Bd. 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 seven major areas:

- Office of P-12 Education;
- Office of Performance Improvement and Management Services;
- Office of Cultural Education;
- Office of Higher Education;
- Office of Adult Career and Continuing Education Services;

- Office of Counsel; and,
- Office the Professions.

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>.

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 48 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 Board of Regents and the State Education Department (§§ 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, the granting, revocation and annulment of teaching and administrative 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 State 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 Lagrange*, 51 Ed Dept Rep, Dec. No. 16,315 (2011); *Appeal of Goldin*, 43 Ed Dept Rep 330 (2004); *Appeal of M.H.*, 43 Ed Dept Rep 210 (2003); *Appeal of Simms*, 42 Ed Dept 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 N.Y. Inst. of Massage, Inc.*, 45 Ed Dept Rep 495 (2006); *Appeal of Karpen*, 40 Ed Dept Rep 199 (2000)). Such actions can only be challenged in court in an Article 78 proceeding (*Appeal of N.Y. Inst. of Massage, Inc.*).

The commissioner of education has issued regulations that set forth the procedures to be followed in such appeals (8 NYCRR Parts 275, 276 and 277). For example, 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 or her 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).

Additional procedures applicable to appeals involving homeless children and youth are found at 8 NYCRR § 100.2(x).

All applicable regulatory procedures, general instructions, and sample forms, along with a series of questions and answers to help guide individuals who are not represented by an attorney but may wish to file an appeal with the commissioner, are available from SED's Office of Counsel at <http://www.counsel.nysed.gov/appeals>.

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 Wait*, 51 Ed Dept Rep, Dec. No. 16,353 (2012); *Appeal of D'Orazio and Carey*, 41 Ed Dept Rep 292 (2002); *Appeal of D.M. and M.M.*, 41 Ed Dept Rep 302 (2002)).

The commissioner will not decide the constitutionality of a statute (*Appeal of St. Cyr*, 27 Ed Dept Rep 351 (1988); *Matter of Van Druff*, 21 Ed Dept Rep 635 (1982)). Similarly, the commissioner will not resolve "novel questions of constitutional law" in an administrative appeal (*Appeal of Almedina*, 33 Ed Dept Rep 383 (1993); *Ware v. Valley Stream High Sch. Dist.*, 75 N.Y.2d 114 (1989)).

In addition, the Commissioner has no jurisdiction to review violations of the Open Meetings Law (*Appeal of Ament*: 51 Ed Dept Rep, Dec. No. 16,350 (2012); *Appeal of Schumann*, 47 Ed Dept Rep 249 (2007); *Appeal of Barnett*, 40 Ed Dept Rep 403 (2000)), the Freedom of Information Law (*Appeal of Ament*; *Appeal of Razzano*, 39 Ed Dept Rep 303 (1999); *Appeal of Tsu, Iannacone and Dunne*, 39 Ed Dept Rep 84 (1999)), the Family Educational Rights and Privacy Act (*Appeal of Mee Jo*, 45 Ed Dept Rep 365 (2006) and Section 504 of the Rehabilitation Act of 1973 (*Appeal of a Student with a Disability*, 51 Ed Dept Rep, Dec. No. 16,258 (2011)).

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 Ed Dept 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 Appeal of Thomas*, 51 Ed Dept Rep, Dec. No. 16,322 (2011); *Appeal of Polistin*, 45 Ed Dept Rep 504 (2006); *Appeal of Shepard*, 42 Ed Dept Rep 262 (2003); *Application to Reopen the Appeal of D.H.*, 41 Ed Dept Rep 283 (2002)).

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 (Ed Dept 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, decisions from 1991 to the present 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 “Guide to the Reorganization of School Districts in New York State,” NYS Education Department, available at: http://www.p12.nysed.gov/mgt/serv/sch_dist_org/.

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 **2:6–2:8**).

1:20. What is a union free school district?

A *union free school district* is a school district generally formed from one or more common school districts to operate a high school program, which common school districts cannot do. First authorized by legislation in 1853, union free school districts are administered by a school board of between three and nine members. The number of board members of a union free school district may be increased or decreased as set forth in law (§§ 1702, 1703; see **2:6–2:8**).

Currently, not all union free school districts operate a secondary school program, and some have been established solely as special act school districts to serve children who reside in specified childcare institutions (see **1:24**).

1:21. What is a central school district?

A *central school district* is a school district formed by combining any number of common, union free, and central school districts. First established in 1914, the central school district is the most common form of district organization in the state. Like union free districts, central school districts may operate a high school. Their school boards may consist of five, seven, or nine members (§ 1804(1)). The number of board members may be increased or decreased as set forth in law (§ 1804(3); see **2:6–2:8**).

1:22. What is a central high school district?

A *central high school district* is a school district that provides only secondary education to children from two or more common or union free school districts. Only three such districts exist in the state, and the Legislature has prohibited the formation of additional such districts, except in Suffolk County.

A central high school district's governing board is composed of representatives from each of its participating districts. The number of members of such board shall be not less than five. A central high school district is part of a supervisory district (§§ 1912–1914; see **8:2**).

1:23. What is a city school district?

A *city school district* is a school district whose school boundary lines are identical with that of a city. There are two types of city school districts: those with a population under 125,000 and those with a population of 125,000 or more (§§ 2501, 2550). The enlargement of a city school district by the addition of one or more union free, common, or central school districts contiguous to the city school district results in an enlarged city school district (§ 1526).

Article 51 of the Education Law applies to city school districts with less than 125,000 inhabitants. Their governing boards may consist of five, seven, or nine members (§ 2502(2)).

Article 52 of the Education Law applies to cities with populations of 125,000 or more. There are five in New York State, commonly referred to as the Big 5 school districts: Buffalo, New York City, Rochester, Syracuse, and Yonkers. Rochester and Syracuse have seven-member boards, chosen by the voters at either a general or municipal election (§§ 2552, 2553(2)). Yonkers has a nine-member school board, each member appointed by the mayor (§§ 2552, 2553(3)). Buffalo has a nine-member school board: one member elected by the qualified voters in each of the city's six school subdistricts, and three members elected in a city-wide, at-large election by the qualified voters (§ 2553(10)(c)).

In New York City, which is also governed by Article 52-A of the Education Law, a city-wide Panel for Educational Policy has 13 members (§ 2590-b(1)(a)). Five of them are appointed by the city's borough presidents, and eight are appointed by the city's mayor, including the chancellor, who serves as an ex-officio, non-voting member of the board (§§ 2590-b(1)(a), 2590-h). The city board elects its own chairperson from among its voting members (§ 2590-b(1)(a)).

In addition, New York City has 32 community district education councils, each composed of 11 voting members and one non-voting member (§ 2590-c(1)). Nine of the voting members are parents of children attending a public school within the district who are selected by the presidents and officers of the parents' association or parent-teacher association. They serve for a term of two years (§ 2590-c(1)(a)). Two of the 11 voting members are appointed by the borough presidents corresponding to such district. They must be residents of, or own or operate a business within the district and have extensive business, trade, or education experience and knowledge. Such members serve for two years and may be reappointed but only for one additional two-year term (§ 2590-c(1)(b)). The non-voting member is a high school senior appointed by the superintendent from among the elected student leadership (§ 2590-c(1)(c)). The community district education councils are responsible for prekindergarten, nursery, kindergarten, elementary, intermediate, junior high schools, and related community district programs within the community district (§ 2590-e).

1:24. What is a special act school district?

A *special act school district* is one of those districts created by a special act of the Legislature and enumerated in Chapter 566 of the Laws of 1967, as amended (§ 4001(8); 8 NYCRR § 105.1(d)). These districts have been established on the grounds of charitable institutions caring for children and youth and serve students who, for unique reasons, cannot be served in a traditional public school system. For example, Abbott House in Westchester County is known legally as Union Free School District No. 13, and Mother Cabrini School in Ulster County is known legally as West Park Union Free School District.

They are designated by the state Legislature as public school districts authorized to receive state financial aid. Section 3602 of the Education Law outlines the details on apportionment of state aid for such districts.

Special act school districts have their own school board. The commissioner of education appoints two public members to each of these boards upon the recommendation of a regional interview team for a four year term. If a board member vacates his or her office during their term, the commissioner may appoint an eligible person for the remaining balance of the term or for a full term. (L. 2004, c. 628; L. 2004, c. 629; 8 NYCRR Part 105).

1:25. What is a board of cooperative educational services (BOCES)?

A *board of cooperative educational services* (BOCES) is a voluntary, cooperative association of school districts in a geographic area that have banded together to provide educational or business services more economically than each district could offer by itself. Each BOCES is governed by a board of between five and 15 members elected by the component school boards (Article 40). See **chapter 7** for more detailed information.

1:26. What is the relationship of a school district to local and county governments?

The relationship between a school district and local and county governments is a multifaceted one that is based on the necessity for close communication and cooperation regarding the development and administration of programs and services to be provided by the governmental bodies to the schools of the district.

In addition to their concern regarding the education of the students of their district, school boards must perform a variety of functions related to the security, safety, health and well being of their students. Thus, boards must work with numerous agencies of local governments, such as the police and fire departments as well as health, fiscal, taxation, and civil defense authorities.

Many school districts also find they work closely with county government bodies, such as planning and zoning commissions, in the selection and acquisition of school sites, and in the construction of school buildings and related structures or additions.

1:27. Who determines the official name of a school district?

The Education Law provides that school districts, other than city school districts, adopt simplified legal names subject to the approval of the commissioner of education (§ 315).

The commissioner's centralization order designates the name of a centralized school district (§ 1801(2); 8 NYCRR Part 240). However, the name of a central school district established or reorganized by such an order may be changed by the district's school board if a written request is filed with the commissioner at least 14 days before the establishment or reorganization of the district (§ 315; see **23:2** on centralization).

The State Education Department shall issue, on request, certificates certifying the name of a school district and the names of the towns and counties in which the territory of the district is located, or in the

case of school districts other than city school districts, which are wholly or partly located within a city, the names of the city, as well as the towns and counties in which the territory of the district is located (§ 315).

The Parent–Teacher Association

1:28. What is the parent-teacher association’s relationship to the public schools?

The New York State Congress of Parents and Teachers, otherwise known as the parent-teacher association (PTA), is a voluntary group of citizens that acts in an advisory capacity to school boards, superintendents, and principals. School boards remain responsible for the administration of the schools and the development of the policies that govern their operation.

Sections 2590-d(2)(a) and (b) of the Education Law state that a New York City community education council must provide for either a parent association or a PTA in each school under its jurisdiction and maintain regular communications with each association. In addition, community education counsels must meet quarterly with the elected officers of the parent association or PTA and provide them with factual information on student achievement, including but not limited to the following: annual reading scores, comparison of the achievement of students in comparable grades and schools, as well as the record of achievement of the same children as they progress through the school. The information may not be disclosed in a manner that would identify individual pupils (§ 2590-d(2)(b)).

1:29. May PTA members serve on school boards?

Yes. Service as an officer or member of a parent-teacher association (PTA) does not bar individuals from membership on a school board. However, a member of the PTA who is a teacher within the same district may not serve, as teachers may not serve on the school board of the district in which they are employed (§ 2103(4); see 2:12).

1:30. Where can information about the PTA and its publications be obtained?

Information about the parent-teacher association (PTA) can be obtained from the New York State Congress of Parents and Teachers, Inc., One Wembley Court, Albany, N.Y. 12205; telephone 518-452-8808 or via its Web site at <http://www.nyspta.org>.

Structure