

Legal Handbook for School Administrators

by Arthur D Melendres

07-14-2000

LEGAL HANDBOOK FOR SCHOOL ADMINISTRATORS

by

Arthur D. Melendres

Modrall, Sperling, Roehl, Harris & Sisk, P.A.

New Mexico School Administrators face a variety of legal issues on a regular basis. This excerpt from the Legal Handbook for School Administrators, 2000 (Omni Publishers, Inc. 2000), addresses governing authority, governing agencies, charter schools, and alternative certification.

GOVERNING AUTHORITY

Educators should be aware that several layers of federal and state authority govern their administrative actions.

- **Overview**

The chart below illustrates authority of school law by its level in the pyramid. The top of the pyramid is the highest level of authority.

United States Constitution
 XX
 Federal Law/Regulations
 XXXX
 State Constitution
 XXXXXXXXX
 State Statute
 XXXXXXXXXXXXX
 State Agency Regulations
 XXXXXXXXXXXXXXXXX
 District/School Rules
 XXXXXXXXXXXXXXXXXXXXX

United States Constitution

The United States Constitution is the supreme law of the land. Significantly, no mention is made of education in the Constitution. In 1973, The United States Supreme Court ruled that education is not a right guaranteed by the Constitution but is a responsibility of the individual states (*See San Antonio Independent School District vs. Rodriguez*). The Court has since ruled however, that once a state provides for public education, the right to elementary and secondary school education receives constitutional status under the *Fourteenth Amendment*. This means two things principally--that elementary and secondary school education must be provided to all persons within the jurisdiction of the United States and that such education becomes a property right which may not be taken away without due process of law.

The first ten amendments to the United States Constitution, known as *The Bill of Rights*, are important provisions to educators.

The Bill of Rights includes the *First Amendment's*, guarantees of freedom of speech, press and religion as well as the amendment's prohibition of laws respecting an establishment of religion; the *Fourth Amendment's* prohibition against unreasonable searches and seizures; the *Fifth Amendment's* directive that no person can be deprived of life, liberty, or property without due process of law; the *Eighth Amendment's* protection against cruel and unusual punishment; and the Fourteenth Amendment, which guarantees that individuals should not be deprived of life, liberty, or property without due process of law and ensures equal protection of the law.

New Mexico Constitution

Article XII, Section One of the New Mexico Constitution provides that a uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.

New Mexico Statutes Annotated

Consistent with the New Mexico Constitution, the New Mexico Public School Code provides that New Mexico continues to strive to enhance and upgrade the delivery of quality education in New Mexico. The New Mexico legislature recognizes that there must be an educational emphasis on the primary grades, especially the importance of early education to a child's future educational career. The legislative findings of the New Mexico Public School Code recognizes that teachers and administrators play a key role in reform efforts and recognizes their importance in the educational process. The New Mexico Public School Code notes that the purpose of reform legislation is to stress the importance of substantive academic subjects, provide for a greater emphasis on the primary grades, upgrade curriculum and graduation requirements, systematically evaluate instructional improvement and student progress, increase parental involvement in the public schools, and to recognize that teachers should be treated like other professionals.

New Mexico Department of Education Regulations

The New Mexico State Board of Education is the governing authority and has control of all public schools. The State Board promulgates, publishes, and enforces regulations to exercise its authority granted pursuant to the Public School Code.

District/Schools Rules

Local school boards may adopt regulations pertaining to the administration of their local school district. Local policies must be in accordance with the United States Constitution and the New Mexico Constitution, the New Mexico Public School Code, and New Mexico State Education Regulations.

- **Checklist**
 - Become generally familiar with the circles of authority within which you work, particularly the local school and school district circles. These will affect your employment and professional lives most directly. Make

sure you have copies of school district and local school rules and policies.

- **Authority**

- UNITED STATES CONSTITUTION, ART. I, § 8 AND AMENDMENTS I, IV, V, VIII, AND XIV.
- ELEMENTARY AND SECONDARY EDUCATION ACT, 20 U.S.C. § 6301 *et seq.* (1994).
- INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA), 20 U.S.C. § 1401 *et seq.* (1994).
- AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. § 12101 *et seq.* (1994).
- REHABILITATION ACT, 20 U.S.C. § 1405 *et seq.* (1994).
- RELIGIOUS FREEDOM RESTORATION ACT, 42 U.S.C. § 2000 bb *et seq.* (1994).
- THE NEW MEXICO CONSTITUTION, ARTICLE XII.
- NEW MEXICO PUBLIC SCHOOL CODE, NMSA § 1978, § 22-1-1 *et seq.*
- *San Antonio Independent School District vs. Rodriguez*, 411 U.S. 1 (1973).

GOVERNING AGENCIES

Local school district boards, under general oversight from the State Board of Education and the State Department of Education, govern New Mexico public schools.

- **Overview**

United States Department of Education

The United States Department of Education ("DOE") is the federal agency principally charged with implementing federal educational policy. The Secretary of Education heads the agency and is a cabinet officer, appointed by the President of the United States. The DOE has six program area offices:

- Elementary and Secondary Education
- Post-Secondary Education
- Vocational and Adult Education
- Bilingual Education and Minority Language Affairs
- Special Education and Rehabilitative Services
- Educational Research and Improvement

Regional staffs primarily are involved in the areas of student financial assistance, civil rights enforcement, vocational rehabilitation services, and Inspector General audits and investigations.

New Mexico State Department of Education

The State Board of Education consists of 15 members (10 elected and 5 Governor-appointed). The State Board of Education determines public school and vocational educational policy and controls, manages, and directs all public schools under provisions of applicable laws.

Independent School Districts

Responsibility for supervision of public schools in a locality is vested in the local school district, governed by a board that has five (5), or seven (7) members, elected to four-year terms. Pursuant to NMSA 1978, § 22-5-4, a local school board has the following power or duties:

Local school boards; powers; duties.

- Subject to the regulations of the state board, supervise and control all public schools within the school district and all property belonging to or in the possession of the school district;
- Employ a superintendent of schools for the school district and fix his salary;
- Delegate administrative and supervisory functions of the local school board to the superintendent of schools;
- Subject to the provisions of law, approve or disapprove the employment, termination or discharge of all employees and certified school personnel of the school district upon a recommendation of employment, termination or discharge by the superintendent of schools; provided that any employment relationship shall continue until final decision of the board. Any employment, termination or discharge without the prior recommendation of the superintendent is void;
- Apply to the state board for a waiver of certain provisions of the Public School Code relating to length of school day, staffing patterns, subject area or the purchase of instructional materials for the purpose of implementing a collaborative school improvement program for an individual school;
- Fix the salaries of all employees and certified school personnel of the school district;
- Contract, lease, purchase and sell for the school district;
- Acquire and dispose of property;
- Have the capacity to sue and be sued;
- Acquire property by eminent domain as pursuant to the procedures provided in the Eminent Domain Code;
- Issue general obligation bonds of the school district;
- Repair and maintain all property belonging to the school district;
- For good cause and upon order of the district court, subpoena witnesses and documents in connection with a hearing concerning any powers or duties of the local school boards;
- Except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code;
- Adopt regulations pertaining to the administration of all powers or duties of the local school board;
- Accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the school district or the public school to which it is given; and

- Offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction or other appropriate disciplinary disposition by the courts or juvenile authorities of offenders in case of theft, defacement or destruction of school district property. All such rewards shall be paid from school district funds in accordance with regulations that shall be promulgated by the department of education.

Local School Regulations

Notwithstanding the above, principals at each school in the district can establish school policies and rules to ensure the safe and efficient operation of the school.

Local school rules and regulations must be consistent with those established by federal and state authorities higher up in the hierarchy. Administrators must enforce district, state, and federal laws, and regulations, as well as local school board policies.

- **Checklist**

- Find out what authority has been delegated to the superintendent or to the principal with respect to hiring, discipline, termination, and other areas of school policy.
- Know how many members are on the local school board, how they are elected, and where and when they meet.
- Know that upon written request, the school district must supply their names and addresses to anyone who requests the same in writing (e-mail requests are not considered request made in writing and may, therefore, not be honored).
- Make an effort to attend school board meetings. You might arrange a rotation with a group of colleagues so that one of you always attends and reports back on school board meetings. *The New Mexico Open Meetings Act* requires posting of advance notice of such meetings.
- In the event of a conflict or dispute with a teacher or parent involving local and school district policy, you should be familiar with the requirements of state and federal authority. Know where you can access the *New Mexico Public School Code* (local library, county law library at the courthouse) and New Mexico Department of Education Regulations.

- **Authority**

- NEW MEXICO PUBLIC SCHOOL CODE, NMSA 1978, § 22-1-1 *et seq.*
- Local School District Rules, Regulations, and Policies

CHARTER SCHOOLS

The State Legislature has authorized a system of Charter Schools for the implementation of a variety of educational approaches, which may not be available in the traditional public school classroom.

- **Overview**

Recent New Mexico legislation authorizes the creation of charter schools under the auspices of the State Department of Education and the local district within which the charter school is located.

- Charter Schools are operated independently of local boards of education by a governing body.
- Upon receipt of its charter, the governing body is responsible of the operation and supervision of the charter school.

Legislative Purpose

The 1999 Charter Schools Act is to enable individual schools to restructure their educational curriculum to encourage the use of different and innovative teaching methods that are based on reliable research and effective practices or have been replicated successfully in schools with diverse characteristics; to allow the development of different and innovative forms of measuring student learning and achievement; to address the needs of all students, including those determined to be at risk; to create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; to improve student achievement; to provide parents and students with an educational alternative to create new, innovative and more flexible ways of educating children within the public school system; to encourage parental and community involvement in the public school system; to develop and use site-based budgeting; and to hold charter schools accountable for meeting state board minimum educational standards and fiscal requirements.

Charter schools' rights and responsibilities; operation

- Pursuant to NMSA § 22-8B-4, a charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.
- A start-up school shall enroll students on a first-come, first-served basis; thereafter, a start-up school shall establish a waiting list starting with priorities on a first-come, first-served basis. As classroom space becomes available, persons highest on the waiting list shall be notified and given the opportunity to enroll.
- A charter school shall be administered and governed by a governing body in the manner set forth in the charter. A charter school shall be responsible for its own operation, including preparation of a budget, contracting for services and personnel matters.
- A charter school may negotiate or contract with a local school district, a university or college or any third party for the use of a facility, its operation and maintenance, and the provision of any service or activity that the

charter school is required to perform in order to carry out the educational program described in its charter.

- In no event shall a charter school be required to pay rent for space that is deemed available, as negotiated by contract, in school district facilities; provided that the facilities can be made available at no cost to the district. All costs for the operation and maintenance of the facilities used by the charter school shall be subject to negotiation between the charter school and the district.
- A charter school may negotiate with a local school district to provide transportation to students eligible for transportation under the provisions of the Public School Code. A charter school may negotiate with a local school district for capital expenditures.
- A charter school shall be a nonsectarian, nonreligious and non-home-based public school that operates within a public school district.
- A charter school shall not charge tuition or have admission requirements.
- A charter school may acquire, pledge and dispose of property; provided that upon termination of the charter, all assets of the charter school shall revert to the local school board that authorized the charter.
- A charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.
- A charter school may contract, sue or be sued. A local school board that approves a charter school shall not be liable for any acts or omissions of the charter school.
- A charter school shall comply with all state and federal health and safety requirements applicable to public schools.

Who May Establish a Charter School

A Charter School may be established by:

- teachers and parents of a school district;
- an institution of higher education; or
- a private entity located within the State in conjunction with teachers and parents.

Student Eligibility for Enrollment

Charter schools:

- must be open to all students on a space available basis;

- shall not discriminate in admission policies on the basis of intellectual or athletic abilities, measures of achievement or aptitude, status as a handicapped person, English language proficiency, or any other illegal basis;
- may limit admission to a particular grade level or area of concentration, such as mathematics or the arts;
- may establish reasonable criteria to evaluate prospective students which shall be outlined in the school's charter;
- may give a preference to resident students;
- may randomly select students where the number of applicants exceeds available spaces.

Charter School Financing

The amount of funding allocated to the charter school shall be not less than ninety-eight percent of the school-generated program cost. That portion of money from state or federal programs generated by students enrolled in a charter school shall be allocated to charter schools serving students eligible for that aid. All services centrally or otherwise provided by the local school district, including custodial, maintenance and media services, libraries and warehousing shall be subject to negotiation between the charter school and the local school district.

Transportation

The local school district in which the Charter School is located must provide transportation to Charter School students on the same basis as it does for other district students.

Teacher Credentials

All Charter School teachers and professional support staff must hold appropriate State certifications.

- **Authority**
 - The 1999 Charter Schools Act, NMSA § 22-8B-1. *et seq.* (1999).
 - The Charter School District Act, NMSA § 22-8C-1. *et seq.* (1999).

ALTERNATIVE CERTIFICATION

The New Mexico legislature recently enacted new legislation on alternative certification, effective July 1, 2000.

- **Overview**

Pursuant to NMSA 1978, § 22-10-3.5, the state board can issue an alternative certificate to a person meeting the statutory and regulatory requirements for alternative certification.

To receive an alternative certificate, an applicant must show that she/he has:

- completed a bachelor of arts or science degree at a regionally accredited institution of higher education, including completion of a minimum of thirty credit hours in a particular field at either the graduate or undergraduate level; or
- completed a master of arts or science degree at a regionally accredited institution of higher education, including completion of a minimum of twelve graduate credit hours in a particular field; or
- completed a doctor of philosophy or doctor of education degree at an accredited institution of higher education; and
- passed any teachers exam required by the state board for individuals seeking a standard certificate.

An individual seeking alternative certification must hold degrees that appertain and correspond to the subject area and level of instruction that will enable the individual to teach in a competent manner as determined by the state board.

The statute provides that a person receiving an alternative certificate must complete a minimum of twelve semester hours of instruction in teaching principles in a program approved by the state board or the state department of education. The school district must verify that the teacher candidate has successfully demonstrated the state-board-approved competencies for entry-level teachers that correspond to the grade level being taught prior to assuming teaching duties.

- **Authority**
 - NMSA 1978, § 22-10-3.5