5. School Boards

Composition

5:1. What is a school board?

A *school board* is a corporate body that oversees and manages a public school district's affairs, personnel, and properties (§§ 1601, 1603, 1701, 2502(1), 2551). With the exception of New York City and Yonkers, its members are elected by the residents of the school district that the board oversees (see **5:2**, **5:6**).

The term *corporate body* indicates that a school board is treated as a corporation, a legal entity that has an existence distinct and apart from its members and has the capacity for continuous existence without regard to changes in its membership. As such, the legalities of a school board's contracts, as well as the validity of a board's policies and resolutions, do not depend on its individual members.

Board members do not assume any personal liability for the school district even though they may be personally liable for certain conduct (see **77:1**, **81:9**). Generally, school board members take official action only by majority vote at an official meeting (see **5:20**).

5:2. What is the composition of a school board?

A school board is composed of its elected members. One member is elected by the board at its annual reorganizational meeting to serve as president (see **14:1**). At its discretion, the board also may elect a vice president, who exercises the duties of the president in case of that officer's absence or disability. If the office of president becomes vacant, the vice president acts as president until a new president is elected (§ 1701).

5:3. Is there a difference between a trustee and a school board member?

No. The term *trustee* generally refers to a member of a school board of a common school district, whereas the term *school board member* generally refers to a member of the school board of any other type of school district. These terms are sometimes used interchangeably, but the more commonly used term is board member.

Board member is also the term used throughout this book, unless a distinction is necessary for accuracy or clarity.

5:4. Are school board members local or state officials?

School board members are local officials.

Section 2 of the Public Officers Law defines *state officers* as those who are elected by all of the state's voters (such as the governor, lieutenant governor, comptroller, and attorney general); members of the state Legislature; justices of the state Supreme Court; Regents of the University of the State of New York; and every officer, appointed by one or more state officers, or by the Legislature, and authorized to exercise his or her official functions throughout the state or without limitation to any political subdivision of the state. All others are considered to be local officers, including school board members. However, their authority and duties are defined by the state and federal constitutions and laws, as well as by rules and regulations adopted by the Board of Regents.

5:5. Must a student serve as an ex-officio non-voting member of a school board?

Yes. Commencing July 1, 2025, school districts, outside of New York City that operate a high school must establish a process for designating at least one student as an ex officio non-voting school board member ("student board member") (§§ 1702(3), 1804(12), 1901(2), 2502(10), 2553(11); see **7:5** for information on board of cooperative educational services' student board members).

In union free, central, central high school or small city districts that had a policy that allowed for a student board member in effect prior to August 5, 2003, such policy may remain in effect for the selection process. Otherwise, in those districts, the student board member may be any of the following:

- The elected student president of the high school,
- A student elected by the student body,
- A student selected by the high school student government,
- A student selected by either the high school principal or superintendent of schools, or
- A student selected by a majority vote of the school board (§§ 1702(3)(c), 1804(12)(c), 1901(2)(c), 2502(10)(c)).

In districts that have multiple high schools, the selection process must take that into consideration and provide a mechanism allowing for fair representation among the schools (§§ 1702(3), 1804(12), 1901(2), 2502(10)). In addition, student board members must have attended high school in the district for at least one year prior to selection (§§ 1702(3)(d), 1804(12)(d), 1901(2)(d), 2502(10)(d)).

In all districts, the student board members are entitled to sit with the board at all public meetings and hearings and may participate in other board activities and responsibilities at the discretion of the board (§§ 1702(3)(a), 1804(12)(a), 1901(2)(a), 2502(10)(a), 2553(11)). They may not, however, vote or attend executive session or other meetings or hearings that are closed to the public (§§ 1702(3)(b), 1804(12)(b), 1901(2)(b), 2502(10)(b), 2553(11)).

In New York City, community district education councils have two high school seniors that serve as non-voting council members. The superintendent appoints the students from among the elected student leadership (§ 2590-c(1)(d)).

5:6. How many school board members serve on a school board?

It depends on the type of school district. As the voters of the district determine, a common school district may have one or three trustees (§§ 1602(1), 2101(1); see **5:3**). A union free district may have from three to nine board members (§§ 1702(1), 2101(2)). A central school district may have a board consisting of five, seven, or nine members (§ 1804(1)). The board of a central high school district is comprised of a minimum of five members, at least one from each common district and at least two from each union free school district within the central high school district (§§ 1901, 1914). A small city district with a population under 125,000 may have a board consisting of five, seven, or nine members (§ 2502(2)).

Except in New York City, a large city district's board may have between three and nine members (§ 2552). For example:

- In Yonkers, nine school board members are appointed by the mayor from the city at large (§§ 2552(d), 2553(3)).
- In both Rochester and Syracuse, seven board members are elected by the voters at large, at either a general or municipal election or both (§§ 2552(b), (c), 2553(2)).
- In Buffalo, a total of nine school board members are elected by the voters. Six are elected from six subdistricts of equal population created by the Buffalo Common Council. Three members are elected from the city at large (§§ 2552(a), 2553(10)).

In New York City, a city-wide Panel for Educational Policy (PEP) consists of 24 members, each borough president appoints one member while each of the community district education council presidents elects one member from their borough for a total of 10 borough representatives. One independent member serves as chair of the board who is selected by the mayor from among three qualified candidates. The remaining 13 members are appointed by the mayor (including the chancellor and comptroller of New York City who serve as ex-officio, non-voting members) (§ 2590-b(1)(a)(1)(D), (2), (3)). For information on the City's community education councils, see §§ 2590-b, 2590-c, 2590-e; NYC Education Department, *Community and Citywide Education Councils*, at: https://www.schools.nyc.gov/get-involved/families/Community-and-citywide-education-councils-cecs; see also **1:25**.

A board of cooperative educational services (BOCES) has between five and 15 members elected by the members of the school boards of the BOCES' component school districts (§ 1950(1), (2)). A more detailed discussion of BOCES members' terms, as well as other issues related to BOCES, is provided in **chapter 7**.

5:7. May the number of members on a school board be changed?

Yes. In common school districts that have only one trustee (see **5:3**), two-thirds of the legal voters present and voting at any annual meeting may vote to increase the size of the board to three trustees (§ 1602(3); see also *Matter of Gillison*, 70 State Dep't Rep. 60 (1949)). In common districts that already have three trustees, a simple majority of the voters present and voting may decrease the size of the board to one trustee.

When the voters determine to decrease the number of trustees to one, the trustees in office continue in office until their terms expire, and thereafter only one trustee will be elected (§ 1602(2)).

In union free and central school districts, the number of members of a board can be increased or decreased by a majority vote of the qualified voters present and voting at the annual meeting. A proposition to increase or decrease the size of the school board must be put before the voters upon petition of 25 voters or 5 percent of the number of people who voted in the previous annual election, whichever is greater (§§ 1703(1), (2), 1804(3); *Matter of Degioia*, 17 Ed Dept Rep 451 (1978); see also *Appeal of Swanson*, 29 Ed Dept Rep 503 (1990)).

In small city districts, the board may on its own motion, and must on a written petition signed by at least 500 qualified voters of the district, submit a proposition at the annual election to increase or decrease the number of members of the board (§ 2502(4)(a)).

Petitions to change the number of members on a school board must be submitted enough in advance, according to the procedures prescribed by the board, to allow a statement giving notice of the proposition to be included in the notice of the annual meeting (§§ 1703(2), 2035(2), 2502(4)(b); see *Appeal of Rosenberg*, 31 Ed Dept Rep 398 (1992); *Matter of Presutti*, 17 Ed Dept Rep 445 (1978); see also **15:9**, **15:26**).

If a board receives two conflicting propositions with respect to changing the number of board members (one to increase and one to decrease) it is not required to put both before the electorate and may accept only the first properly filed proposition (*Appeal of Devine*, 44 Ed Dept Rep 278 (2005)). Also, a board may reject a proposition to increase the number of board members for failing to include an appropriation for the costs of a special district meeting in order to elect such additional members (*Appeal of McNamee*, 56 Ed Dept Rep, Dec. No. 17,103 (2017)).

For information on changing the number of members on boards of cooperative educational services, see **7:5**.

« 5. », « 5:8. »

5:8. When do changes to the number of members on a school board take effect?

When the voters determine to increase the number of board members, the additional members are elected at a special meeting to be held for that purpose, between 30 and 60 days from the annual meeting approving the increase (§§ 1703(3), 1804(3); *Appeal of McNamee*, 56 Ed Dept Rep, Dec. No. 17,103 (2017); *Matter of Beck*, 74 State Dep't Rep. 78 (1953)), except in common and small city school districts where the additional members are elected at the next annual meeting (§§ 1602(3), 2502(4)(c)). The terms of the new members must be established to ensure that as nearly as possible an equal number of terms expire each year (§§ 1602(3), 1804(3), 2105(9), 2502(3), (4)(c)(3)).

If the voters approve a decrease in the number of board members, no election may be held until the number of members on the board is equal to or less than the number to which the board has been decreased. At subsequent elections in union free, central, and small city districts, board members are to be elected for terms aimed at ensuring that an equal number of terms expire each year (§§ 1602(2), 1804(3), 2105(10), 2502(4)(c)).

« 5. », « 5:9. »

5:9. What is the term of office for board members?

It depends on the type of school district. In common school districts that have just one trustee, the trustee serves only a one-year term (§§ 1602(1), 2105(1)). However, in common districts with three trustees, the trustees are elected for three-year terms (§§ 1602(1), 2105(2)). In union

free and central school districts, board members are elected for terms of three, four, or five years (§§ 1702(1), 1804(1), 2105(3)).

Members of a central high school board must be members of the school board of a component district while they are members of the central high school board. However, the term of office on the central high school board can be shorter than the term on the school board of the component district (*Appeal of Carbonaro*, 35 Ed Dept Rep 257 (1996); see also §§ 1901, 1914).

The term of office for city board members varies among the various city districts. In most city districts with less than 125,000 inhabitants, the term of office of a school board member is three or five years, as determined by the district (§ 2502(3)). In the Albany City School District, a board member's term is four years (§ 2502(3)). In the Rensselaer City District, the term is five years (§ 2502(9-a)(n)).

In city school districts with 125,000 or more inhabitants (see **1:25**), the term of office of school board members is as follows:

- In Buffalo, board members elected from the city school subdistricts are elected for three-year terms, while the term of office for members of the school board who are elected at large is five years (§ 2553(10)(n)).
- In New York City, all elected and/or appointed members of the Panel for Educational Policy (i.e., the central board) hold a one-year term (§ 2590-b(1)(a)(1)(D)). For information on the term of office for members of the City's community education councils, including non-voting high school seniors, see § 2590-c(1); see **5:5**.
- In both Rochester and Syracuse, board members are elected to four-year terms (§ 2553(4)).
- In Yonkers, board members are appointed to five-year terms (*Id.*).

Board of cooperative educational services (BOCES) board members generally serve three-year terms (§ 1950(2)). A more detailed discussion of BOCES members' terms, as well as other issues related to BOCES, is provided in **chapter 7**.

5:10. May the term of office for a board member be changed?

Yes. In central and union free school districts, board members serve either a three, four or five-year term. Education Law section 2105(3) specifically authorizes the voters of such districts to decrease the full term of a board member to three or four years or increase the full term of a member to four or five years. Such changes can be accomplished only by voter approval of a proposition submitted to the voters at an annual meeting or election (§ 2105(3); *Appeal of Rockwell*, 51 Ed Dept Rep, Dec. No. 16,355 (2012); *Appeal of Atkins*, 35 Ed Dept Rep 375 (1996)).

Board members in city districts with less than 125,000 inhabitants serve either a three or five-year term. Education Law section 2502(3) specifically authorizes such districts to decrease the full term of a board to three years or increase it to five by adopting a proposition at any regular meeting or election to do so (§ 2502(3)). A board may on its own motion and shall upon a written petition signed by at least 500 qualified voters, submit a proposition at the annual school election to increase or decrease the term of office of members of the board (§ 2502(4)(a)).

The current term of office of incumbent board members may not be increased or decreased by any such proposition. In addition, propositions to increase or decrease the term of office must specify that vacancies during each of the three years next succeeding the adoption of such proposition will be filled for terms that ensure, as nearly as possible, that equal numbers of board members will be elected each year (§§ 2105(3), 2502(3); *Appeal of Atkins*).

5:11. Are school board members required to take an oath of office?

Yes. School board members are not able to exercise the duties of office until they take the following oath: "I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of . . ., according to the best of my ability" (N.Y. Const. art. 13, § 1). This oath must be filed with the district clerk. In the case of a board of cooperative educational services, each board member files an oath in the office of the clerk of the county in which that member resides (Pub. Off. Law § 10).

The refusal or neglect of a school board member to file an oath of office within 30 days after the commencement of the term of office to which the person is elected, or if appointed, within 30 days after notice of appointment or commencement of the term of office to which the person is appointed, causes the office to become vacant (Pub. Off. Law § 30(1)(h); *Appeal of Campbell*, 50 Ed Dept Rep, Dec. No. 16,246 (2011); *Appeal of Rausch*, 41 Ed Dept Rep 351 (2002)).

Usually the president of the board or the district clerk administers the oath to newly elected school board members at the board's annual reorganizational meeting, although there is no legal requirement that the oath be administered at such a meeting (*Appeal of Campbell*). The fact that the oath has been administered at such meeting should be noted in the board's minutes.

There is no requirement either that the board president know the oath is being administered and/or participate in the administration of the oath (*Id.*). In addition, an individual who has not properly taken and filed an oath of office has no authority to administer oaths to others (*Application of Karpen*, 39 Ed Dept Rep 98 (1999)).

Members who are reelected to the school board also must take the oath at the beginning of their new term of office, just as at the beginning of the first term they held. Board officers, such as the president, vice president, clerk and treasurer, must be administered the oath each year at the time of their appointment or reappointment.

Vacancies

5:12. How do vacancies occur on a school board?

In addition to the timely expiration of a board member's term of office, vacancies on a school board may occur due to death, incapacity, resignation, removal from office, or refusal to serve (§ 2112; Pub. Off. Law § 30(1)(a-c); *Matter of Turchiarelli*, 31 Ed Dept Rep 402 (1992); see also *Appeal of the Bd. of Educ. of the Gilbertsville-Mount Uptown CSD*, 59 Ed Dept Rep, Dec. No. 17,836 (2020); see **5:13**, **6:40**, **6:42**).

A position also may become vacant if an incumbent board member moves to a residence outside the district (Pub. Off. Law § 30(1)(d); *Matter of Willard*, 23 Ed Dept Rep 448 (1984)). However, "an individual's residence is not lost until a new residence is established through both intent and action" (*Appeal of Lavelle*, 28 Ed Dept Rep 189 (1988)).

A vacancy also will occur if a board member is convicted of a felony or crime involving his or her oath of office; enters a guilty plea in federal court to a felony or to a crime involving a violation of his or her oath of office; is declared incompetent; refuses or fails to timely file an oath of office; or by a judgment of a court indicating the same (see Pub. Off. Law § 30(1)(e-h); *Appeal of Rausch*, 41 Ed Dept Rep 351 (2002); Opn. Att'y Gen. F 97-7, I 99-3; see also **5:11**). In an informal opinion, the New York State Attorney General indicated that a school board member who pled guilty to a misdemeanor petit larceny charge after being charged with a felony for illegally collecting unemployment insurance violated her oath of office and vacated her position as a school board member by operation of law. The crime involved "willful deceit" and a "calculated disregard for honest dealings" (Opn. Att'y Gen. I 99-3; see also F 97-7).

« 5. », « 5:13. »

5:13. May a vacancy on a school board be declared if a member is absent from three successive meetings?

Yes. A vacancy based on "refusal to serve" may be declared if the record clearly shows that a board member has failed to attend three successive meetings and has no sufficient excuse for the absences (§§ 2109, 2502(8), 2553(8), 2590-b(8)(g), 2590-c(6)(a); *Appeal of Butler*, 58 Ed Dept Rep, Dec. No. 17,544 (2018); *Appeal of McQuaid Kaplan*, 50 Ed Dept Rep, Dec. No. 16,113 (2010); *Appeal of Dupras*, 47 Ed Dept Rep 471 (2008); *Appeal of Cox*, 28 Ed Dept Rep 156 (1988)). If the board member has sufficient excuse to warrant absence from the meetings, a vacancy cannot be declared (*Appeal of Mahoney,* 53 Ed Dept Rep, Dec. No. 16,605 (2014); *Appeal of Rowe*, 31 Ed Dept Rep 280 (1992); *Application of Shader*, 31 Ed Dept Rep 252 (1992)).

It is for the board to initially determine whether a board member has rendered a valid excuse for missing board meetings (*Appeal of Butler*). The commissioner of education will overturn the board's determination only if it was arbitrary and capricious or if the board abused its discretion in finding that the seat was vacated (*Id.*).

« 5. », « 5:14. »

5:14. Are school districts obligated to fill a vacancy when one arises?

The applicable laws impose upon union free and central school districts the power and duty to fill a vacancy (§§ 1709(17), 1804(1); see *Appeal of the Bd. of Educ. of the Gilbertsville-Mount Uptown CSD*, 59 Ed Dept Rep, Dec. No. 17,836 (2020); *Appeal of French*, 32 Ed Dept Rep 100 (1992)) and require common districts to immediately call a special meeting to fill the vacancy when it occurs (§ 1607(2)).

According to the commissioner of education, small city school boards are not obligated to fill a vacancy because the statutory language governing vacancies in small city schools makes filling a vacancy optional (§ 2502(6); *Appeal of Keyrouze*, 34 Ed Dept Rep 468 (1995)).

Different rules and/or exceptions apply in the Rensselaer city school district and large city school districts (§§ 2502(9-a)(n); 2553(6), (7), (9)(e), (10)(n), 2590-b(1)(a)(1)(D), 2590-c(6)(b), (c), (d), (e)).

« 5. », « 5:15. »

5:15. What is the procedure to fill a vacancy on a school board?

As a general rule, any school board may call a special election to fill such a vacancy within 90 days after it occurs. If that does not happen, the district superintendent may fill it by appointment in school districts under his or her jurisdiction (§ 2113(1)). However, instead of calling a special election, school boards in union free, central, and small city districts may choose instead to appoint a qualified person to fill a vacancy (§§ 1709(17), 1804(1), 2502(6)).

On the other hand, common districts must call a special district meeting immediately to fill a vacancy (§ 1607(2)). In addition, the commissioner of education may order a special election to fill a vacancy in a union free school district (§ 2113(2)). Moreover, the Education Law specifically requires that the Kenmore-Town of Tonawanda UFSD school board fill a vacancy by appointment of the remaining board members to serve until the next annual election (§ 2113(4)).

Consistent with the limitation on the board's authority to act as a corporate body, a vote of the majority of the whole board ordinarily is required to fill a vacancy by appointment (see **5:20**). But in small city school districts, due to a unique provision of law, only a majority of the remaining members of the board is needed to appoint a qualified person to fill a board vacancy (§ 2502(6), (9-a)(n)).

Special rules of law govern the appointment of board members in the Rensselaer city school district (§ 2502(9-a)(n); see **5:14**), and in large city districts (§§ 2553(6), (7), (9)(e), (10)(n), 2590-b(1)(a)(1)(D), (10), 2590-c(6)(b), (c), (d), (e)).

A person elected or appointed to fill a vacancy takes office immediately upon filing the oath of office (§§ 1709(17), 2502(6); see **5:11**, **6:36**).

5:16. What is the term of office for board members who fill a vacancy on a school board?

If a vacancy is filled by a special district election, the elected board member serves for the remainder of the unexpired term (§ 2113(3)). If the vacancy is filled by appointment, the new board member serves only until the next regular school district election (N.Y. Const. art. 13, § 3; §§ 1709(17), 2113(3), 2502(6); see also *Appeal of the Bd. of Educ. of the Gilbertsville-Mount Uptown CSD*, 59 Ed Dept Rep, Dec. No. 17,836 (2020); see **5:15**).

School Board Powers and Duties

5:17. What are the powers and duties of a school board?

A school board has no inherent powers and possesses only those powers expressly delegated by statute or necessarily and reasonably implied therefrom (*Appeal of Woodarek,* 46 Ed Dept Rep 1 (2006), *petition dismissed,* (Sup. Ct. Albany Cnty. May 22, 2007); *Appeal of McKenna*, 42 Ed Dept Rep 54 (2002); *Appeal of Rosenkranz,* 37 Ed Dept Rep 330 (1998); *Appeal of Bode*, 33 Ed Dept Rep 260 (1993)).

The general powers and duties of school boards are outlined in the Education Law, which assigns different powers and duties to different types of school districts, some of which are common to various types of districts, others of which are specific to a single type of district. Figure 1 below lists the different types of districts, and the Education Law sections that govern their respective responsibilities.

Fig. 1

School Board Responsibilities

Type of school district	Education Law section
Common school districts	1604
Union free school districts	1709
Central school districts	1804
Central high school districts	1903
Small city school districts	2503
Large city school districts	2554
New York City Panel for Educational Policy (formerly, the central board)	2590-g
New York City community district educational councils	2590-e

Additional powers and duties may be found in other state laws such as the General Municipal Law, the Local Finance Law, the Real Property Tax Law and the Public Officers Law, as well as in federal law and regulations, and the state education commissioner's regulations.

However, all school boards are similar in that they are responsible for the education of the children residing in their respective districts.

5:18. What are some of the basic powers and duties of school boards?

Generally, school boards are responsible for the admission, instruction, discipline, grading, and, as appropriate, classification of students attending the public schools in their districts; for the employment and management of necessary professional and support staff; and for purchasing, leasing, maintaining, and insuring school buildings, properties, equipment, and supplies (see generally § 1709). With the exception of large city school districts, they also must present a detailed statement of estimated expenditures (i.e., the proposed budget) for the ensuing school year, which must be submitted to the district voters annually for approval (§§ 1608, 1716, 2022, 2601-a; see also **18:1–8**, **15:1**).

Consistent with law, school boards also have the authority and duty to adopt whatever policies, rules, and bylaws they deem will best meet their statutory responsibilities and secure the best educational results for the students in their charge (see, e.g., §§ 1709(1), (2), 2503(2)), including rules and regulations concerning the order and discipline of the schools (§ 1709(2); *Appeal of Anonymous*, 48 Ed Dept Rep 503 (2009); see also **5:38-41**).

Special rules govern the adoption of bylaws and regulations by the city-wide Panel for Education Policy (city board), the chancellor, and the individual community education councils in New York City (§§ 2590-d(1), (2), 2590-g).

5:19. What is devolution, and how does it affect the powers and duties of school boards?

Devolution is the process by which the powers and duties assigned to specific school districts at the top of the list in Figure 2 below devolve and become applicable to other types of school districts through specific provisions of the Education Law (§§ 1710, 1804(1), 1805, 1903, 2503(1), 2554(1)). As shown in this figure, districts lower on the list are granted many of the powers of districts higher on the list by reference to the powers possessed by those districts. As these powers and duties devolve down to other types of districts, they are joined by additional powers and duties that then devolve to districts located lower on the list. The additional powers, however, do not apply to districts located higher on the table. Powers and duties devolve down but not up.

Fig. 2

Devolution

Type of District	Ed. Law Article	Ed. Law Section(s)
Common School District	33	—
Union Free School District	35	1710
Central School District	37	1804(1), 1805
Central High School District	39	1903
Small City School District	51	2503(1)
Large City School District	52	2554(1)

Unless the powers that devolve are inconsistent with other specific provisions of the Education Law applicable to a particular type of district, such a district has all of the powers and duties assigned specifically to it, as well as all of the powers and duties assigned to the other types of districts located above it on the list (see *Matter of Felicio*, 19 Ed Dept Rep 414 (1980)).

The figure above indicates the order of the devolution of powers and duties of districts. The figure also refers to the article of the Education Law that governs each type of district, as well as the section of the Education Law that provides for such devolution.

In this publication, a general reference or citation to powers and duties of school districts refers to those of union free districts, as set forth in section 1709, which usually apply, through devolution, to all other districts, with the exception of common districts.

5:20. How does a school board take official action on behalf of its school district?

A school board acting in its corporate capacity is required to transact its business in the same manner as the governing body of any corporation; that is, its acts are required to be authorized by resolutions or motions duly adopted or passed by a majority of the whole board (§§ 1606, 1710, 1804(1), 2502(1), 2503(1); Gen. Constr. Law § 41; *Downey v. Onteora CSD*, 2009 U.S. Dist. LEXIS 67368 (N.D.N.Y. July 29, 2009); *Coughlan v. Cowan*, 21 Misc.2d 667 (Sup. Ct. Suffolk Cnty. 1959); *Appeal of Instone-Noonan,* 39 Ed Dept Rep 413 (1999); *Matter of Ascher*, 12 Ed Dept Rep 97 (1972)).

5:21. May a school board delegate its authority to perform certain duties?

Yes. In limited circumstances, certain statutes and regulations permit a school board to delegate its authority. For example, a board may delegate its authority to audit claims to a particular person or entity (§§ 1604(35), 1709(20-a), 2554(2-a); see **25:17-20**). It may also delegate the power to perform ministerial acts to other district officers or employees, such as authorizing the business manager to make purchases with appropriated funds of certain items that do not require competitive bidding (8 NYCRR § 170.2(b)).

The commissioner of education has stated a board may delegate authority to one of its members to act in a representative capacity on behalf of the board for a particular limited purpose, such as official school visits (*Appeal of Silano*, 33 Ed Dept Rep 20 (1993), *petition dismissed*, *sub nom*. *Silano v. Sobol,* (Sup. Ct. Albany Cnty. Jan. 10, 1994); *Matter of Bruno*, 4 Ed Dept Rep 14 (1964); see also **5:34**).

5:22. What happens if a school board fails to take official action?

A transaction has no legal effect and is not considered an official action unless made at a properly constituted meeting of the board (Gen. Constr. Law § 41). For example, a state appellate court ruled that litigation commenced on a district's behalf by the school attorney with the knowledge and tacit approval of the board was invalid and without effect because the board failed to formally vote in a public meeting to authorize such litigation. As a result, the district lost its victory before the lower court (*Gersen v. Mills*, 290 A.D.2d 839 (3d Dep't 2002)). Such a vote is required whether legal proceedings are commenced in the name of the district or the board itself (see *Barkan v. Roslyn UFSD*, 67 A.D.3d 61 (2d Dep't 2009)).

5:23. May a school board govern through the appointment of standing committees?

No. While there is no state law that either prohibits or requires standing committees, board committees that constitute less than a quorum of the entire board cannot take official action for the board (Gen. Constr. Law § 41; see *Appeal of Greenwald*, 31 Ed Dept Rep 12 (1991); see also **5:20**).

5:24. May a school board appoint advisory committees?

Yes. A school board may appoint advisory committees to assist in addressing specific problems or issues. Those asked to serve on these committees should understand that their role is advisory and that the final decision on all issues considered rests ultimately with the board.

Furthermore, certain advisory committees are required by law or commissioner's regulations, and their composition and duties are prescribed therein. For example, the Education Law requires visitation committees to visit every school under the board's jurisdiction at least once annually

(§ 1708(2)). Commissioner's regulations require each school board to establish an acquired immune deficiency syndrome (AIDS) advisory council to advise the board concerning the content, implementation, and evaluation of an AIDS instruction program (8 NYCRR § 135.3(b)(2), (c)(2)(i)).

5:25. May a school board hire a superintendent of schools?

Yes. A school board has the authority to hire a superintendent of schools and enter into employment contracts of varying duration with its superintendent as permitted by law (§§ 1604(8), 1711, 2503(5), 2554(2); see **10:1**, **10:5–7**). A board may also agree to extend the superintendent's contract, so long as the entire term of the contract plus any extensions does not exceed the maximum term authorized by statute (*Appeal of Boyle*, 35 Ed Dept Rep 162 (1995), *petition dismissed*, (Sup. Ct. Albany Cnty. June 10, 1996); see also **10:7–8**).

5:26. May a school board remove its superintendent?

Generally, yes. The board, however, must comply with any applicable provisions set forth in law or in the superintendent's contract (see **10:19–21**).

5:27. May an outgoing school board extend a superintendent's contract and thus bind successor boards?

Yes. The commissioner of education has ruled that even last-minute extensions of a superintendent's contract by an outgoing board, while not democratic, are legal and bind a successor board, because there is specific statutory authority permitting multi-year contracts with a superintendent (*Appeal of Dillon*, 33 Ed Dept Rep 544 (1994); *Appeal of Knapp*, 34 Ed Dept Rep 207 (1994); see **10:7–12**). However, an outgoing board may not tack on to an already existing contract a new obligation that would, when read together with the initial contract, exceed the statutory time limits on superintendent contracts (*Appeal of Boyle*, 35 Ed Dept Rep 162 (1995), *petition dismissed*, (Sup. Ct. Albany Cnty. June 10, 1996); see **5:25**, **10:10**).

5:28. May an outgoing school board bind a successor board to a contract with a school attorney?

No. It is improper for an outgoing school board to bind its successor to a contract with a school district attorney (*Harrison CSD v. Nyquist*, 59 A.D.2d 434 (3d Dep't 1977), *appeal denied*, 44 N.Y.2d 645 (1978)). Outgoing boards may not enter into employment contracts for professional services that bind a successor board absent express statutory authority to do so (see *Karedes v. Colella,* 292 A.D.2d 138 (3d Dep't 2002), *rev'd on other grounds*, 100 N.Y.2d 45 (2003); see also *Morin v. Foster*, 45 N.Y.2d 287 (1978)), as in the case of a superintendent's contract (see **5:27**).

5:29. May a school board establish a school camp?

Yes. An individual school district, or two or more school districts jointly, may establish and operate a school camp on school land or land acquired for that purpose. A city district also may establish and operate a school camp on land provided for that purpose in state parks adjacent to the district. The camp may be used to furnish education in subjects deemed proper by the board, as well as to provide physical training, recreation, and maintenance for all children of school age whether they attend public or private school. Districts may charge a reasonable fee to cover costs of food and instructional materials, although the law requires that provision be made for children who cannot afford these fees (§§ 4501-4502).

5:30. May a school board authorize credit unions to open and maintain student branches within elementary and secondary schools?

Yes. However, use of such branches is restricted to students and excludes faculty, staff, or students' families. Approval from the school board is a prerequisite to a branch opening, and student membership expires 30 days after secondary school graduation or immediately upon transfer to another school or termination of enrollment (Banking Law § 450-b). This authority facilitates and fosters the skills necessary to fulfill learning standards requirements for mathematics and career development outlined in the commissioner's regulations (8 NYCRR § 100.1(t)(1)(ii), (vii)). The establishment and use of such branches also helps students "obtain the skills, knowledge and experience necessary to manage their personal finances and obtain general financial literacy," which helps prepare them for the workforce and financial independence (L.2003, c. 656 § 3, Sponsor's Memo).

5:31. Must the school board designate a bank or trust company as an official school district depository?

Yes. The school board must designate one or more banks or trust companies as depository(ies) for district funds in accordance with section 10 of the General Municipal Law. The board resolution designating a depository must specify the maximum amount that may be kept on deposit at any time in each designated bank or trust company. These designations and monetary amounts may be changed at any time by further resolution (Gen. Mun. Law § 10(2); see **25:23**).

5:32. Are school boards required to conduct a school census?

Some are. In the cities of New York, Buffalo, and Rochester, the school board must take a school census for the purpose of enforcing the provisions of the compulsory education law (§ 3240). In addition, acting as a permanent census board, school boards in small city school districts must conduct a continuous census of all children residing in their district from birth to 18 years of age, or age 21 in the care of children with

disabilities, except that a census for preschool children from birth to five years of age may be prepared and filed biennially on or before the 15th day of October (§ 3241(1), (2)).

All other school districts are simply authorized, rather than required, to take a census of all children residing in the district from birth to 18 years of age biennially (§ 3242).

However, all districts have an obligation to identify, locate and evaluate all students with disabilities residing in their district who are in need of special education, including those who are homeless, wards of the state, and those who attend nonpublic schools, and establish a register of such students entitled to attend school or receive preschool services (§ 4402(1)(a); 8 NYCRR § 200.2(a); see also **57:14–15**).

Powers and Duties of Individual School Board Members

5:33. Do school board members have any individual rights to act on behalf of the school board?

No. Individual school board members have no inherent powers by reason of holding office (see Gen. Constr. Law § 41; *Downey v. Onteora CSD*, 2009 U.S. Dist. LEXIS 67368 (N.D.N.Y. July 29, 2009); *Appeal of Silano*, 33 Ed Dept Rep 20 (1993), *petition dismissed*, (Sup. Ct. Albany Cnty. Jan. 10, 1994); *Coughlan v. Cowan*, 21 Misc.2d 667 (Sup. Ct. Suffolk Cnty. 1959); *Matter of Bruno*, 4 Ed Dept Rep 14 (1964)).

However, they may act in a representative capacity on behalf of the board for a particular limited purpose that has been specifically delegated to them by the school board. Otherwise, they have no greater rights or authority than any other qualified voter of the district (*Id.*; see also **5:21**, **5:34**). As such, they also lack authority to, for example, direct supervisors on matters related to employee overtime work (*Appeal of Balen*, 40 Ed Dept Rep 479 (2001)).

5:34. Do individual school board members have the right to visit schools in an official capacity?

It depends. Every board member has the same right as parents or school district residents to visit the schools in accordance with the district procedures that apply to the public in general. However, individual board members may visit schools for official purposes, such as for building inspection, or interviewing staff, only with official authorization from the board (*Appeal of Silano*, 33 Ed Dept Rep 20 (1993), *petition dismissed*, *sub nom*. *Silano v. Sobol,* (Sup. Ct. Albany Cnty. Jan. 10, 1994); *Matter of Bruno*, 4 Ed Dept Rep 14 (1964); see also *Application of Sailer*, 63 Ed Dept Rep, Dec. No. 18,362 (2023); *Appeal of Gill and Burnett*, 42 Ed Dept Rep 89 (2002)).

5:35. Do board members have a right to inspect personnel records?

Yes, but only for inspection and use in the deliberation of specific matters before the school board. There is no unconditional right to review employee records. In addition, board members may only use information garnered from examination of such records to aid in fulfilling duties related to appointments, assignments, pay, promotions, demotions, discipline or dismissal; to aid in the development and implementation of personnel policies; or such other uses that are necessary to enable the board to carry out its legal responsibilities (8 NYCRR Part 84; see also *Appeal of Meyer*, 46 Ed Dept Rep 43 (2006); see **13:24**).

However, a board member wishing to review an employee's record must provide the reason for the request with sufficient specificity to allow the board as a whole to determine if there is a proper reason to examine the files. If there is, the board must then vote to go into executive session to examine the files (8 NYCRR § 84.2). It is not enough for a board member asking to review an employee's record to simply state the review's purpose is "to enable the Board to carry out its legal responsibilities under the Education Law." He or she must specifically state how the requested records would enable that endeavor (*Appeal of Meyer*).

« 5. », « 5:36. »

5:36. Do school board members have a right to express their own individual personal views on school district issues?

Yes. However, when expressing their personal views on issues before school district voters, individual school board members must:

- Clearly distinguish their personal views from those of the board. For example, when writing a letter to the editor of a newspaper in support of a voter proposition, school board members must be sure to explicitly state that the letter expresses their personal views (*Appeal of Koehler*, 52 Ed Dept Rep, Dec. No. 16,373 (2012); *Appeal of Wallace*, 46 Ed Dept Rep 347 (2007)).
- Not use district funds, facilities or channels of communication to encourage voters to vote in support of or against the school budget or any proposition (*Appeal of Johnson*, 45 Ed Dept Rep 469 (2006); *Appeal of Goldin*, 40 Ed Dept Rep 628 (2001); see also *Appeal of Grant*, 42 Ed Dept Rep 184 (2002); *Appeal of Allen*, 39 Ed Dept Rep 528 (2000); see **15:44**).

« 5. », « 5:37. •

5:37. Are school board members required to take any kind of training?

Yes. For example, school board members are required to receive training in the following within the first year of their term:

Six hours on fiscal oversight, accountability, and fiduciary responsibilities (§ 2102-a(1)(a); see **25:4**).

General training on the powers, functions and duties of school boards, and the powers and duties of other governing and administrative authorities affecting public education (§ 2102-a(1)(b); see 2102-a(4) for additional information pertaining to the City School District of the City of New York).

The curricula and providers used for such training must be approved by the commissioner of education (§ 2102-a(2)).

Once the training is completed, it does not need to be repeated if a board member is re-elected (§ 2102-a(1)(c); NYS Education Department, *Accounting and Auditing, Board Member Training* (updated Apr. 2016), at: http://www.p12.nysed.gov/mgtserv/accounting/board_train.html). However, proof of completion must be filed with the district clerk (§ 2102-a(3)). Failure to complete the mandatory training within the time

period required by law can subject a board member to removal from the school board (*Appeals of Stepien & Lilly*, 47 Ed Dept Rep 388 (2008); see **6:43-53**). Training expenses incurred are a lawful charge upon the district (§ 2102-a(3)).

Other areas in which school board members must receive training include:

• Child abuse in an educational setting (§ 1132(2); 8 NYCRR § 100.2(hh)(2)(ii); see **65:33**).

• Annual data privacy and security awareness training (8 NYCRR § 121.7; see **13:35**).

Although not required by law, the state comptroller has encouraged annual sexual harassment prevention training for school board members (Office of the NYS Comptroller, Division of Local Government and School Accountability, *Avoca CSD, Sexual Harassment Prevention Training* (Aug. 2023), at: https://www.osc.ny.gov/files/local-government/audits/2023/pdf/avoca-central-school-district-s9-23-19.pdf; Labor Law § 201-g(2)(c); see also **83:11**).

Policies

5:38. What is a policy?

A *policy* is a statement that establishes standards and/or objectives to be attained by the district. School board policies should clearly state the mission of the school district, the objectives to be reached and the standards to be maintained. In addition, they should set out processes for the allocation of responsibilities and delegation of duties to specific staff members; and the methods to be used, the procedures to be followed and the reasoning to be applied in conducting the district's business.

5:39. What is the function of school board policies?

Policies are the means by which a school board leads and governs its school district. Policies form the bylaws and rules for the governance of the district and serve as the standards to which the board, administration, and students are held accountable (see § 1709). A board's policies ensure that the school district performs its established mission and operates in an effective, uniform manner. They are legally binding and serve as the local law of the district that may be enforced by the district. Moreover, if a district violates its own policies, the commissioner of education may enforce the policy against the district (*Appeal of Watson*, 56 Ed Dept Rep, Dec. No. 17,082 (2017); *Appeal of Touré*, 54 Ed Dept Rep, Dec. No. 16,660 (2014); *Appeal of Parrino*, 53 Ed Dept Rep, Dec. No. 16,588 (2014)).

5:40. Must school boards maintain policy manuals?

No. Districts may be required to adopt policies on certain issues, but they are not required to maintain or organize them in any particular manner. However, it is a common practice to organize and number policies in a single manual for ease of reference and access for the board, district staff, and the public. Such policies may also be maintained for easy board, administrator, and public access by storing them in an on-line, fully searchable format, such as those offered through the New York State School Boards Association (see **5:42** for more information).

« 5. », « 5:41. »

5:41. What is the difference between a policy and a regulation?

Policies are statements by the school board establishing standards and/or objectives to be attained by the district. Policies can only be adopted or amended by the vote of a majority of the board members at an open meeting. Regulations are generally more detailed directives developed by the administration to implement the board's policies. Policies give direction and goals for the district, while regulations give specific orders and procedures to be followed to move in that direction and to attain those goals. Unless otherwise specified by the bylaws of the school board, it is the power and duty of the superintendent to enforce all provisions of law, rules, and regulations relating to the management of the schools and other educational, social, and recreational activities under the direction of the school board (§§ 1711(2)(b), 2508(2)).

It is important that board policies be both broad enough to allow administrators to exercise discretion in dealing with day-to-day problems, yet specific enough to provide clear guidance. It is equally important that regulations be written to implement, but not modify, the board's policies.

« 5. », « 5:42. •

5:42. What services does the New York State School Boards Association provide to assist local school boards in developing and maintaining up-to-date policies?

The New York State School Boards Association (NYSSBA) offers a variety of free and fee-based services to assist local school boards in developing and maintaining policy manuals for more effective governance and administration. Services include:

- Development of a customized policy manual that is tailored to meet the district's needs, is streamlined, up-to-date and well-organized (Essential Policy Manual).
- School Policy Update subscription service that provides, on a regular basis, annotated sample policies that are responsive to the latest changes in law and regulation.
- An online policy manual service that converts the district's current policy manual into a powerful online format that can be instantly accessed.
- Policy workshops tailored to address issues related to a district's policy needs.
- A policy service that allows a district to design its own policy package to suit the district's needs (Policy by Design).

For more information on these services, as well as access to online policy resources, visit NYSSBA's website at: http://www.nyssba.org and click "Member Services" and select the "Policy Services" page or contact the Legal/Policy Services Department directly at 518-783-0200 or policy@nyssba.org.

Shared-Decision-Making

Editor's Note: This subsection discusses the basic rules governing the shared-decision-making process found in commissioner of education regulations at 8 NYCRR § 100.11. Additional requirements applicable specifically to the City School District of the City of New York are found in the Education Law (§ 2590-h (15)(b), (15)(b-1), 2590-r(b)(i); see also Chancellor's Regulation A-655; Appeal of Thomas, *54 Ed Dept Rep, Dec. No. 16,669 (2014);* Appeal of Pollicino, *48 Ed Dept Rep 279 (2008)).*

5:43. What is shared-decision-making?

The terms *shared-decision-making* and *school-based management* refer to a model for decision making in the schools that emphasizes both the involvement and meaningful participation of administrators, teachers, and parents in the process (8 NYCRR § 100.11). Every school board and board of cooperative educational services (BOCES) must have in place a district plan for the participation by teachers, parents, and administrators in school-based planning and shared-decision-making (8 NYCRR § 100.11(b)).

5:44. How often must the district's shared-decision-making plan be reviewed?

The plan must be reviewed biennially and amended or recertified without change, as appropriate, following the same procedures as for the original plan. The amended or recertified plan must be filed with the district superintendent and submitted to the commissioner for approval, together with a statement of the plan's success in meeting its objectives, no later than February 1 of the year in which the review occurs (8 NYCRR § 100.11(f)).

5:45. What must be included in a school district's shared-decision-making plan?

The district-wide shared-decision-making plan must specify the following:

- The educational issues that are subject to cooperative planning and shared-decision-making at the building level.
- The manner and the extent of involvement of each of the parties.
- The means and standards to be used in evaluating the improvement in student achievement.
- The method of holding each party accountable for the decisions they helped make.
- The process for resolving disputes on educational issues at the local level.

- The manner in which all state and federal requirements for the involvement of parents in planning and decision-making will be coordinated and met by the overall district plan (8 NYCRR § 100.11(c)).

5:46. Are there any limitations on which educational issues a school-based shared-decision-making committee may address?

The commissioner's regulations do not define which educational issues the school-based committees must consider. A school board is expected to work together with its district-wide planning committee to define what issues the school-based shared-decision-making committee will examine.

School-based committees might consider a range of issues, such as mission statements, school schedules, grouping for instruction, the allocation of discretionary resources, and links with community organizations.

In working with shared-decision-making committees, board members should be aware that while some education issues may be appropriate for input, they may not be appropriate for delegation. For example,

- A school board is required to formulate the school district budget, and that obligation cannot be delegated to a shared-decision-making team (§§ 1608(1), 1716(1), 1804(1), 1906(3), 2601-a(3); *Appeal of Kastberg*, 35 Ed Dept Rep 208 (1995)).
- While student performance is an appropriate issue for discussion, it is the school board that must set the course of study by which students are graded and classified (§ 1709(3); *Appeal of Orris*, 35 Ed Dept Rep 184 (1995)).
- Final decisions regarding what instructional programs will be offered in a district's schools are also the school board's responsibility (*Appeal of Zaleski*, 36 Ed Dept Rep 284 (1997)).
- Decisions regarding reorganization of a district's schools are also not delegable (*Appeal of Parker,* 39 Ed Dept Rep 220 (1999); *Appeal of Woodward*, 36 Ed Dept Rep 445 (1997)).
- A shared-decision-making committee may screen and make recommendations for the hiring and appointment of employees but it cannot make a binding decision to reject a candidate (*Appeal of Tulip*, 58 Ed Dept Rep, Dec. No. 17,583 (2019)).

The commissioner of education has found that nothing in the shared-decision-making regulation mandates that a school board obtain the approval of a school-based planning team before implementing a decision. In one case, the commissioner determined that a board may establish a day care center at one of its school facilities, despite opposition from the building's shared-decision-making committee (*Appeal of Gillespie*, 34 Ed Dept Rep 240 (1994)).

And while there is no specific case that addresses this particular issue with regard to shared-decision-making, board members should also be aware that a school board cannot delegate its responsibility to grant or deny tenure to an employee (*Cohoes City Sch. Dist. v. Cohoes Teachers Ass'n*, 40 N.Y.2d 774 (1976)).

5:47. Can a school board member be a member of the district-wide shared-decision-making committee?

No. The commissioner of education has held that the intent of the regulation is not for board members to serve on the committee itself, but to work in collaboration with the district-wide committee in developing and amending the shared-decision-making plan (*Appeal of Barr*, 57 Ed Dept Rep, Dec. No. 17,364 (2018); *Appeal of Trombley,* 39 Ed Dept Rep 115 (1999); *Appeal of Chester*, 35 Ed Dept Rep 512 (1996)).

« 5. », « 5:48. »

5:48. Who may be a member of the school-based shared-decision-making team?

According to the commissioner's regulations, school-based committees engaged in shared-decision-making at the building level are to be composed of administrators, teachers, parents, and others at the discretion of the school board or board of cooperative educational services (BOCES), such as students, school district support staff, and community members (8 NYCRR § 100.11(c)(1)).

« 5. », « 5:49. »

5:49. Are school district shared-decision-making plans subject to challenge?

Yes. Anyone who feels aggrieved by the failure of a school board or board of cooperative educational services (BOCES) to provide for consultation, and full participation of all the parties required to be consulted in the plan's development, may appeal to the commissioner of education within the timelines prescribed in regulation (8 NYCRR § 100.11(e)(1); see also *Appeal of Glen Cove Teachers Ass'n*, 43 Ed Dept Rep 347 (2004); *Appeal of Lawrence Teachers' Ass'n*, 39 Ed Dept Rep 119 (1999)). Anyone who participated in the development of the plan and feels aggrieved by any action of the school board or BOCES related to the adoption, amendment, or recertification of the plan may appeal to the commissioner as well (8 NYCRR § 100.11(e)(2)).

« 5. », « 5:50. »

5:50. Must school districts negotiate with their unions over shared-decision-making?

It depends on the circumstance. According to a Public Employment Relations Board administrative law judge (ALJ), a school district did not violate its bargaining obligation by refusing to negotiate over teachers' participation on a shared-decision-making committee or over the alleged impact of an increased workload. In the ALJ's view, the teachers were not acting in their capacity as employees of the district but rather as volunteers, and that the terms of their participation on the committee were not a mandatory subject of bargaining (*Deer Park UFSD (Deer Park Teachers Ass'n*), 26 PERB ¶ 4642 (1993)).

However, where a school district has developed or implemented a plan for the participation of teachers and/or administrators in school-based shared-decision-making as a result of a collective bargaining agreement, any such negotiated provisions must be incorporated into the district's shared-decision-making plan (8 NYCRR § 100.11(h)).

« 5. », « 5:51. •

5:51. Is the shared-decision-making process subject to the Open Meetings Law?

Although there are no court decisions that address this issue, the Committee on Open Government has opined that district-wide planning committees are subject to the Open Meetings Law because they perform a governmental function to the extent that school boards may not adopt a shared-decision-making plan without their collaboration and participation (NYS Department of State, Committee on Open Government, OML-AO-3329 (June 26, 2001); OML-AO-2456 (Apr. 1, 1995); see also *MFY Legal Servs. Inc. v. Toia*, 93 Misc.2d 147 (Sup. Ct. New York Cnty. 1977); see **14:21-28** for basic open meetings law requirements). Therefore, district-wide planning committees must, for example, be open to the general public, conduct business subject to quorum requirements, and provide advance notice of meetings (NYS Department of State, Committee on Open Government, OML-AO-3329 (June 26, 2001); OML-AO-2456 (Apr. 1, 1995); OML-AO-2305 (Jan. 19, 1994)).

In New York City, School Leadership Teams, which carry out shared-decision-making activities, are subject to the same requirements (§ 2590-h(15)(b-1)(iii); *Thomas v. N.Y. City Dep't of Educ.*, 145 A.D.3d 30 (1st Dep't 2016)).

School-based shared-decision-making committees would be subject to the Open Meetings Law if the district's shared-decision-making plan gives them decision-making authority or requires that the board seek their input and recommendations prior to taking action, even if the board rejects their recommendations (NYS Department of State, Committee on Open Government, OML-AO-3265 (Jan. 17, 2001); OML-AO-2305 (Jan. 19, 1994); see **14:25**).