

Basic School Law

2019 Edition



New Jersey School Boards Association

BASIC SCHOOL LAW

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New Jersey School Boards Association

BY

KATHLEEN ASHER, Counsel

JOHN J. BURNS, Counsel

ROBERT A. GREITZ, Consultant, Negotiator

CYNTHIA J. JAHN, General Counsel

KURT REBOVICH, JR., Consultant, Labor Relations

CARL TANKSLEY JR.,
Director, Legal and Labor Relations Department

MICHAEL VRANCIK,
Director, Governmental Relations Department

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New Jersey School Boards Association

BASIC SCHOOL LAW

By: Asher-Burns-Greitz-Jahn-Revovich-Tanksley-Vrancik

Foreword by: Dr. Lawrence S. Feinsod

Design by: A. DiGiacomantonio

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The Legal Structure of New Jersey Public Education

THE FLOW OF AUTHORITY TO EDUCATE

The Source Provisions

Through the Tenth Amendment to the United States Constitution, the authority to provide public education is reserved to the individual states. The people of New Jersey have specifically made education a concern of state government since 1875, and the language of that mandate has not changed since:

The Legislature must provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years.¹

This provision does not prevent the Legislature from providing education to persons who are not between five and 18 years of age, however.² The New Jersey Supreme Court has said that the

¹ *N.J. Const.* 1947, art. VIII, § IV, par. 1. Same provision appears in *N.J. Const.* 1844, art. IV, § VII, par. 6, by amendment of 1875.

² *N.J. Const.* 1947, art. VIII, § IV, par. 1. Same provision appears in *N.J. Const.* 1844, art. IV, § VII, par. 6, by amendment of 1875.

area within which the Legislature may act to advance the public welfare is vast, and the Legislature must have leeway in deciding whether to act, and if so, how far to go.³

The New Jersey Constitution does impose upon the Legislature an affirmative duty of providing a thorough and efficient (T&E) system of free schools for persons within the specified age group, and that system must afford “that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market.”⁴

In addition to this specific school mandate, the New Jersey Constitution contains other provisions that define certain boundaries of the public education enterprise. These include a section that provides that no person must be segregated in the public schools because of religious principles, race, color, ancestry or national origin.⁵ The State Constitution also guarantees that public employees must have the right to organize and to present their grievances and proposals to the state or any of its political subdivisions through representatives of their own choosing.⁶ Interestingly, the Constitution also prohibits the Legislature from passing any private, special, or local laws “[p]roviding for the management and control of free public schools.”⁷

Finally, the State Constitution specifically permits the Legislature to provide for transportation of children between five and 18 years of age “to and from any school,” so long as there are “reasonable limitations as to the distance prescribed.”⁸

The Sharing of Authority

Under New Jersey’s constitutional form of government, the authority and the power to educate are shared among several agencies. To the extent that “local control” has been taken to mean that the educational function of government is controlled exclusively at the local level, the notion of home rule becomes an unwarranted myth. In fact, New Jersey’s educational system is based on a concept of lay control, not local control, and the exercise of that power is shared among officials at all levels of government.

Local political subdivisions, including school districts, are not sovereign entities.⁹ They “may readily be bridged when necessary” to vindicate federal or state constitutional rights and policies.¹⁰ This alignment of power does not, in fact, entail any general departure from the historic home rule

³ *West Morris Regional Bd. of Ed. v. Sills*, 58 N.J. 464, 480 (1971)

⁴ *Robinson v. Cahill*, 62 N.J. 473, 515 (1973). For a discussion on obligations to educate students before age 5 or over 18, see Chapters 4 and 6.

⁵ *N.J. Const.* 1947, art. I, par. 5

⁶ *N.J. Const.* 1947, art. I, par. 19

⁷ *N.J. Const.* 1947 art. IV § VII. par. 9

⁸ *N.J. Const.* 1947, art. VIII, § IV. par. 3

⁹ *Jenkins v. Morris Twp. School District*, 58 N.J. 483, 500 (1971)

¹⁰ *Id.*

principles and practices in New Jersey, but it does insure that constitutional mandates will be carried out.¹¹

The New Jersey Constitution clearly and unequivocally places prime and absolute responsibility for education upon the state Legislature.¹² The Legislature may not delegate or abdicate to others its exclusive function to make the law, but it may delegate to governmental agencies or public officials the power and function to make subordinate rules or orders or findings of fact, within standards and policies prescribed legislatively.¹³ It is through such delegation of authority that the New Jersey Supreme Court has often approved the administrative handling of educational controversies.¹⁴

The power that the Legislature does delegate may be altered or withdrawn at almost any time.¹⁵ For example, the Legislature in New Jersey may alter the power of local school boards to abide by contracts they have previously entered, provided that any private parties involved assent to the change.¹⁶ It may be said in regard to delegated power, that what the Legislature giveth, it may take away.

Therefore, any consideration of the flow of educational authority in New Jersey must take into account the hard fact that this power is one which is voluntarily shared with local, county, and state officials by the Legislature. In some areas of responsibility, the lawmakers have set mandatory standards by express statutory provision. In other areas, the Legislature has delegated such authority to state-level officials. And in still other areas, local boards are vested with broad discretion to set their own standards. While some have been critical of the concentration of power in state-level officials,¹⁷ and others have been critical of local control,¹⁸ the touchstone of that structure is a concept of delegated and shared legislative authority; accordingly the doctrine of implied powers is constitutionally enshrined.

The Doctrine of Implied Powers

As an assurance that governmental authority would properly flow to those who are to exercise it, the New Jersey Constitution confers on local governing bodies not only express powers, but also those powers which are necessary or can be fairly implied as incidental to those expressly conferred.¹⁹ This

¹¹ *Id.*

¹² See, *Robinson v. Cahill*, 62 N.J. at 508-09

¹³ *Williams v. Department of Human Services*, 116 N.J. 102 (1989), *Pascucci v. Vagott*, 71 N.J. 40 (1976); *Burton v. Sils*, 53 N.J. 86 (1968), *appeal dismissed*, 394 U.S. 812 (1969); *Veix v. Senaca Bldg. and Loan Assn.*, 126 N.J.L. 314 (E. & A. 1941)

¹⁴ *Abbott v. Burke*, 100 N.J. 269, 300 (1985)

¹⁵ *County of Morris v. Fauver*, 153 N.J. 80 at 88 (1998)

¹⁶ *Lenahan v. Lakeland Regional High School District Bd. of Ed.*, 1972 S.L.D. 577; citing, *City of Trenton v. State of New Jersey*, 292 U.S. 182 (1923) and *City of Worcester v. Worcester R.R. Co.*, 196 U.S. 539 (1905)

¹⁷ See, *In re Application of Trenton Bd. of Ed.*, 86 N.J. 265 (1981). See also Note, "Schools and School Districts—The Subtle Move Toward Total State Control," 2 *Seton Hall L. Rev.* 174 (1970)

¹⁸ See, *Robinson v. Cahill*, 118 N.J. Super. 223 (1972)

¹⁹ *N.J. Const.* 1947, art. IV, § VII, par. 11.

is known as the doctrine of implied powers, and embodies a concept that has been applied by the courts to school districts as well.²⁰

In applying this doctrine to actions taken by school authorities, courts must resolve the conflict between the need to adhere strictly to what the Legislature explicitly says and the desire to allow school officials reasonable latitude in governing by implying what the Legislature meant. Thus, the courts have found that a board has implied authority to expend public funds for printing a booklet explaining school building projects,²¹ as well as the authority to compensate teaching staff members for unused sick leave.²² On the other hand, the Appellate Division of the Superior Court has held that a county educational services commission lacked the implied authority to contract with a private firm to provide special education services to member boards.²³ Similarly, the State Board of Education has declined to find an implied authority in a local board of education to form a self-insurance fund for employee health benefits.²⁴ However, as a prime example of democracy in action, the Legislature decided in January 2007, to authorize the governing body of any local unit to establish an insurance fund to provide health benefits to employees, in accordance with rules and regulations adopted by the director of the Division of Local Government Services in the New Jersey Department of Community Affairs.²⁵

The Legislature has itself used a form of the doctrine of implied powers. Under a special validating provision, the Legislature has assured that state, county and local education officials will have the power to carry out the actions called for by the education laws. In this regard, whenever an education statute makes the action of an official dependent upon the approval of another official or body, the latter must have the power to approve such action even though that power is not specifically set forth.²⁶

In addition to the foregoing, each major type of educational organization in New Jersey (the New Jersey Commission on Higher Education,²⁷ the State Board of Education,²⁸ and local boards of education)²⁹ is expressly given a broad grant of authority from which to imply further powers.

²⁰ *Herron v. Montclair Bd. of Ed.*, 96 N.J.A.R. 2d (EDU) 167, aff'd on other grounds, 1996 S.L.D. Dec. 4; *In re Application of Trenton Bd. of Education*, 86 N.J. 265 (1981); *Resnick v. East Brunswick Twp. Bd. of Ed.*, 77 N.J. 88 (1978); *Jenkins v. Morris Twp. School District*, 69 S.L.D., 27, 36, rev'd, 58 N.J. 483 (1971); *Union County Vocational School Bd. of Ed. v. Finne*, 88 N.J. Super. 91, 106 (Law Div. 1965); *Merry v. Paterson Bd. of Ed.*, 100 N.J.L. 273 (Sup. Ct. 1924)

²¹ *Citizens to Protect Public Funds v. Parsippany-Troy Hills Bd. of Ed.*, 13 N.J. 172 (1953)

²² *Maywood Ed. Assn. v. Maywood Bd. of Ed.*, 131 N.J. Super. 551 (Ch. Div. 1974)

²³ *N.J.E.A. v. Essex County Educational Services Commission*, No. A-3986-80T2 (App. Div. October 15, 1981)

²⁴ *Irvington Ed. Assn. v. Irvington Bd. of Ed.*, No. A-4805-82T5, 1984 S.L.D. 1939, (App. Div. February 9, 1984)

²⁵ L. 2007, c. 18, N.J.S.A. 40A:10-6

²⁶ N.J.S.A. 18A:2-1

²⁷ N.J.S.A. 18A:3B-1 et seq.

²⁸ N.J.S.A. 18A:4-3 to 19

²⁹ N.J.S.A. 18A:11-1d