

## Laws, Regulations, Decisions in American Education

The federal, state, and local structure of authority over education in the US, and how this expresses itself in legislation and jurisprudence. What federal law and regulations do and do not cover; how states implement in very different ways their fundamental constitutional responsibility for education; how fifteen thousand local education agencies exercise their authority over schools. The role of the federal and state courts in interpreting and also sometimes 'making' law.

Public schools in the United States, as in other countries, function within a framework of laws and regulations and court decisions. The same is true, though to a much more limited extent, of private and parochial schools. While there is naturally much in common between education laws in the United States and in other countries, there are also significant differences.

### Overview

The public education system of the United States is marked by a very strong tradition of local (but not school-level) decision-making, within a framework of laws and regulations enacted at the state level but often applied unevenly by local school systems in the absence of strong state administrative controls. One result is that.

this kind of legal structure creates lots of wiggle room for educational innovators. One can fight local battles to change the rules or move someplace else where the regulatory climate better suits one's pedagogical imagination. And since the question of just who ultimately is responsible for the education of children (parents? the state?) has never been squarely resolved in America, the country has accommodated many alternatives to public schools (Stevens, 6).

'Public education' – that is, schooling provided by local government – is frequently criticized for a variety of real as well as imagined failings and yet enjoys an almost mythical status as the institution which is believed to knit together this highly diverse and constantly changing society (Glenn 1988).

What [Americans] have, in effect, is a normative attachment to the public schools--and an affective inclination to see the public schools in a sympathetic light, whatever the latter's actual performance might be. . . . two-thirds of Americans say the public schools deserve support even when they are performing poorly . . . many private school parents share this same attachment to the public school system. . . . Forty-three percent of public parents say they wouldn't feel right putting their kids in private schools – a profoundly important fact, given that so many of these same parents think that private schools are actually *better* than public schools (Moe 2000, 87-88).

### The Structure of Schooling

The United States is a federal system, and the national Constitution reserves to the states – of which there are now fifty – all powers not explicitly granted to the national government. Among these is the promotion and supervision of education. As in Canada, Australia, Germany, Spain, Belgium, and other countries, schooling is the responsibility of these regional bodies and not of the national government. In distinction from some federal systems, however, the American

states do not (apart from Hawaii and a handful of state-wide schools in other states) directly control and operate schools. That is the responsibility of some fifteen thousand local school districts, most of which correspond to individual municipalities or counties, while some are regional consortia. These local districts (often called LEAs or 'local education agencies') employ teachers and administrators, determine the policies under which their schools operate, and are accountable to local voters, while subject to state laws and regulations and, less directly, to certain federal requirements.

There is thus no single American educational system, but a variety of state systems which have much in common, though without the sort of formal coordination which exists in other federal systems like Germany or Switzerland. All states provide twelve years of elementary and secondary schooling; the dividing line between elementary, intermediate, and secondary schooling varies among local school systems.

Of the 50 million school children in America, about 6 million are privately educated, either attending nonpublic elementary and secondary schools or being home-schooled. Private schools include about one-fourth of the elementary and secondary schools and approximately 11 percent of the elementary and secondary enrollment in the U.S.

The most recent major development, charter schools, are public schools operated by private, civil-society groups, and thus neither fully public nor fully private in the conventional sense. A charter school is run by a board of directors, the composition of which is regulated by the charter proposed by the organizers and approved by the state (or, in some cases, another public agency). The board of directors is responsible for hiring and dismissing staff, budgeting, curriculum development, and the general operation of the school. The charter school is fully funded by the state and may not charge tuition to parents.

Traditionally, Americans have defined a public school as any school run by the government, managed by a superintendent and school board, staffed by public employees, and operated within a public sector bureaucracy. . . . Now consider a different definition: a public school is any school that is open to the public, paid for by the public, and accountable to the public for its results (Finn, Manno and Vanourek, 16).

Since the enactment of charter school legislation in Minnesota in 1991, 40 states and the District of Columbia have adopted charter laws, and 4,128 charter schools were in operation in 2007, serving about 1.2 million pupils; the Obama Administration has made the expansion of the number of charter schools a priority. The long-standing dichotomy of public and private schooling has thus been transcended by a new organizational form with a new and still-developing legal status. The fact that some charter school boards have contracted with for-profit school management firms to operate their schools adds a further – and controversial – element to the situation.

### **The starting point: state laws**

The fifty states have the fundamental responsibility for schools. Every state constitution makes provision for education, which is not mentioned at all in the federal Constitution (see the Appendix for a national survey of state constitutional provisions). For example, the Massachusetts *Constitution*, drafted in 1780 by John Adams, describes the mission of government in relation to schooling in these terms:

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them . . . to encourage private societies and public institutions . . . to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings, sincerity, good humor, and all social affections, and generous sentiments among the people (Part 2, Chapter V, Section II).

State constitutions, like the federal *Constitution*, define the fundamental structure of government and set limits to what government may do, in order to protect individuals and organizations from inappropriate interference by government. The original Massachusetts *Constitution* doesn't say anything about how schools will be organized or paid for; it just says that the state legislature and governor are responsible for seeing that education occurs. And it does something else: it specifies that among the purposes of education will be the development of a number of virtues among the people of the state.

It is up to the state legislature to pass laws which define the shape that schooling will take. These laws may be extremely detailed, as they are in California, or more modest, as in New England, though even in Massachusetts they fill a volume of hundreds of pages. What state laws do is to assign different responsibilities to local officials and to state officials, usually including a state board of education and a top administrator who may be called the Commissioner or the Superintendent of Public Instruction or the Secretary of Education for that state. What a state board of education (which may be elected or appointed) does is oversee the educational efforts of local school officials, and set educational policies. In some states the state board has responsibility for public higher education as well as for k-12 schools.

The authority of a state board of education consists of whatever powers it has been given by the legislature and also by the federal government for any federal programs which the state administers. The laws that state legislators adopt, and the regulations adopted by state boards of education where those exist, define such matters as the number of days, hours, and even minutes of schooling required a year, the age range of compulsory school attendance, the subjects to be included in the mandatory curriculum (and this has generally become much more specific in recent years) and how achievement will be measured, the requirements for graduation, and a host of other matters that have a major impact upon schools.

The rhetoric of education policy has pointed confusingly in two different directions: toward greater school-level decision-making, but also toward what is often called 'systemic reform' or 'alignment,' with all the schools with a district or even a state expected to follow the same approaches. On the other hand, it has been noted that "American government was designed to frustrate exactly the sort of coordinated action within and among governments that systemic reformers seek" (Cohen, 110) through the checks and balances of different levels and different branches of decision-making. Arguably, there are more decisions being made at *all* levels, which may in some respects be a good thing if it reflects more purposeful action, but may also be a cause of crossed signals canceling each other out.

### **The delivery system: local government**

Although schooling is a state responsibility, it is left up to local government to actually deliver elementary and secondary education in 49 of the states; Hawaii is the only exception, with a single state-wide school district. In some cases (particularly in the South) this means that county government operates the schools. In New England, it is local cities and towns, or groups of smaller communities which agree to form a regional school district to operate schools. In all but a few cases, the authority over public schools is not exercised by municipal government as such, but by a parallel and supposedly “non-partisan” school board elected by the voters at the same time that town or city government is elected. A regional school district is commonly governed by a board made up of representatives of the local communities which set it up.

Sixty years ago, before World War II, there were many more local school districts: 119,000 in 1938. Most were small rural districts, many operating a single school (sometimes with only one teacher) to which all the children could walk. Local school boards were usually very close to parents and closely involved with what was happening in the school. Even in cities, a few decades earlier, there had been school boards at the ward level rather than at the city level, so they kept closely involved with the schools and kept an eye on the teachers. In Boston, at one time, there were more than a hundred elected school committee members. These members would visit the schools and examine the pupils to see whether they were being taught well. Educational reformers didn't like that system; they thought that parents and other non-educators had too much influence over the schools, and got in the way of implementing progressive measures. Only professionally-trained administrators, they argued, could create “the one best system,” which should be essentially uniform across the country, whether in city or town. All the experts urged that small rural schools be consolidated into larger schools, small districts into larger districts, and elected school boards removed from direct supervision of the schools.

There are now only about 15,000 school districts in the United States, ranging in size from a handful of students in one school up to a million students in New York City, and to an increasing extent the decisions about curriculum and teachers are made by professional managers. In cities, voters have very little influence over their school systems and it is rare for a controversy over education to have any effect on what happens in schools; they are too well insulated by layers of bureaucracy and by the low visibility of school board elections.

In Boston, Philadelphia and some other cities, indeed, the school boards are appointed rather than elected, and as a result voters have even less influence, and it is the media who keep the pressure on for improvements. According to its advocates, “mayor-led integrated governance promises to improve student performance by introducing streamlined governance, an alignment of political incentives, a politics of partnership, and a reallocation of resources to their most efficient use.” On the other hand, school boards of which the members are elected from single-member districts may encourage “a closer link between the elected official and the constituencies,” and a greater accountability for results leading to higher achievement levels (Wong, Shen, Anagnostopoulos, and Rutledge, 95, 89).

In public education in general, in the United States, it is the school system and not the individual school which has a legal “personality” accorded to it by state law, and only the school system may execute contracts, be sued, expend public funds, and so forth, though of course it may delegate certain of its responsibilities to school principals. In other words, individual public schools do not “exist” in a legal sense; they are simply branch offices, as it were, of the school system. This is why “charter schools” have been so popular for the past dozen years, with most

states adopting them as an alternative form of public education and more than four thousand new schools springing up. Charter schools are public schools which *do* exist independent of a local school system and its political and bureaucratic impediments to flexible and effective decision-making at the school level.

### **The role of the federal government**

The federal Constitution, adopted in 1789, makes no mention of education, and specifies that all powers not explicitly granted to the national government are reserved to the states. The Bill of Rights, adopted in 1791, and later amendments to the federal Constitution, while in no case mentioning education, have had the effect in recent decades of giving the national government, and especially the federal courts, a major role in state and local policy and practices.

The First Amendment (part of the Bill of Rights) defines what has sometimes been referred to as the “first freedom” under the American system. It is succinct, but has been the basis for enormous amounts of jurisprudence, including profound influences on schools:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The United States Supreme Court has held repeatedly that this language forbidding a state ‘establishment of religion’ consequently forbids public funding by any level of government for nonpublic schools with a religious character. Various exceptions will be noted below.

The First Amendment also protects freedom of speech and of the press, rights which the courts have protected with respect to students and teachers in public schools. I will be dealing with some of this jurisprudence in a subsequent discussion.

The Fourteenth Amendment, added to the Federal Constitution in 1868, after the Civil War and the emancipation of slaves, has affected schools in several highly consequential ways. In particular, it is the constant reference-point in matters affecting race and America’s long struggle to undo the effects of past racial discrimination. The first section is significant for our purposes:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The requirement of “equal protection of the laws” has in recent decades placed upon the public schools the major part of the national burden of overcoming the effects of racial injustice through not only equal treatment of African-American (and, subsequently, Hispanic) pupils, but also through various affirmative efforts to remedy the effects of racially-based injustices that in some cases occurred generations ago. Thus, for example, if it can be shown that government policies in any community at some time in the past had the effect of causing residential segregation on the basis of race, a federal court might order that school attendance areas be redrawn in such a way as to overcome the segregatory effects of continuing residential

patterns. Non-public schools are not affected by such remedial requirements, though they are forbidden, by both federal and state (and, sometimes, local) law from discriminating against children or teachers, in admission, employment, or other respects, on the basis of race. We will be discussing these issues at length in the session on Supreme Court cases.

The Fourteenth Amendment has also been interpreted, by the U. S. Supreme Court in 1925, to guarantee as a protected “liberty” the right to choose a private education. Confronted with an Oregon statute mandating that all children attend government-operated public schools, the Supreme Court ruled the statute unconstitutional, insisting that

the fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations (*Pierce v. Society of Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510).

The Fourteenth Amendment also created a requirement of “due process” in the decisions made by government, including public schools. This requirement, often reinforced by state laws, affects how public schools handle pupil discipline and staff evaluation.

There is a considerable body of federal legislation affecting public schools – and, to a lesser extent, private schools – which protect the educational interests of pupils with special needs as well as the right of pupils not to be discriminated against on the basis of race, sex, or national origin, including Title IV of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Equal Opportunities Act of 1974.

Federal legislation and regulations also govern the provision of funding for specific purposes supported by the federal government, amounting to between 6 and 8 percent of the total public expenditure of aid for schools. The federal government, however, has no direct responsibility for curriculum, staffing, or other aspects of schools.

The federal government does play a significant – though limited – role in three spheres, and in 2001 it took the first giant step which is beginning to lead to a greatly expanded role. We'll start with the traditional roles of the federal government in education.

One is through the enforcement of a number of mandates, including civil rights laws and special education requirements. How active this federal role is depends in large part upon whether the state intervenes vigorously to protect the rights of vulnerable students. In Massachusetts, for example, when I was a state official we were successful in limiting federal interventions in our school districts because our own efforts to protect minority and female and special needs students were so aggressive. In other states, however, those who are being discriminated against illegally must often turn to federal officials and the federal courts for protection.

A second federal role involves gathering and publishing data of all kinds, data which often helps to guide policy decisions in the states, and commissioning studies which help to improve educational practice. In general, the states fund very little educational research, and if it were not for federal efforts in this domain, we would be operating in the dark much of the time. You can access much of this research at <<http://nces.ed.gov/>>.

A third federal role is in providing targeted funding to encourage states and school districts to address particular needs more effectively. The high point for such initiatives was in the 1970s, when it seemed as though there was a federal program for every possible educational purpose; many of these were later eliminated or 'consolidated', often allowing state or local government more discretion about how to use the federal funding.

The Bush administration significantly increased the level of federal education funding under the 'No Child Left Behind' law enacted in FY 2001, and there have been further very substantial increases under the Obama Administration, in large part justified as a way to stimulate the economy and to prevent serious problems as the revenues of the states (which, unlike the federal government, are required to operate with balanced budgets) have been shrinking in the present Recession. These measures will be discussed in the session on Accountability.

## **Decisions about Schools**

Within the framework of laws and regulations adopted by state and federal governments, there remain many decisions to be made that affect what children learn through their schooling. Decisions are made by school boards and by the superintendents they hire, by school principals and by teachers, by parents and by students themselves. While there is much rhetoric about putting decisions to a much greater extent in the hands of teachers and school leaders, it is frustrations about making this happen in practice that have led to the growing popularity of independent public charter schools. It has been noted that "the current decision-making structure for public education makes it impossible to do what we need to do to have good public schools" (Hill, Pierce and Guthrie, 7).

Especially through the identification of special policies and programs for particular groups of pupils, there has been a proliferation of guidelines and requirements of all sorts. Unfortunately, "in our efforts to help public schools respond to the needs of an increasingly diverse population, we have made public education more rule-bound, rights-driven, and divided into specialties; we have removed decision-making from the school level and centralized it in district offices, courts, and state departments of education. . . . We had reasons to do these things but the results have not been good" (Hill, Pierce and Guthrie, 11).

The tide has turned, at least at a rhetorical level, but old habits are hard to change. The guidance for instruction that local central offices offer to schools has begun to shift in the direction of reform, but that shift has so far not been accompanied by greater local coherence in guidance for instruction, for districts' responses differ significantly within states, and schools' responses differ significantly within districts.

## **School System Decisions**

School boards (called 'school committees' in the New England states) are in almost all cases elected, though in a few cities they are now appointed by the elected mayor in an effort to unify accountability for budget and for performance. The board appoints a superintendent of schools who is the chief operating officer of the local school system. Local school boards, can also make decisions about adopting curriculum or textbooks and establishing or terminating programs, but always within the framework set by state laws and also keeping an eye on decisions by the courts in other school districts and on federal laws and regulations.

The superintendent plays the major role in recommending a budget and a curriculum and staff appointments, and in some places the elected or appointed board has little remaining discretion in these areas. It is not unfair to say that professionalism, for most superintendents, involves making such careful preparations that all of their recommendations are adopted by the boards, which have the ultimate legal responsibility. In organizational theory, school boards should limit themselves to appointing and periodically advising its superintendent (and perhaps other high administrators), and setting general policies affecting schools and the school system. Inevitably, they are often under pressure – especially in smaller communities – to weigh in on personnel matters involving teachers and other staff, or concerns of parents about the placement or treatment of their children, matters which should be determined by the administrative staff.

The policy decisions that school boards actually make are more often symbolic than effective; indeed, by adopting system-wide policies in response to problems they may make it more difficult for individual schools to have a distinctive character and approach to education. “Schools are operated directly by political bodies . . . subject to those bodies’ need to respond to pressures, take actions that symbolize the importance of all groups, and act like [sic] they intend to find a universal solution to every problem” (Hill, Pierce and Guthrie, 34). These symbolic actions may do more harm than good.

It is a matter of conviction on the part of most school administrators that their elected (or appointed) boards should confine themselves to making “policy” at a fairly high level of abstraction, and leave it up to the professionals to decide how such policies actually apply in practice. As you will appreciate, this leaves a great deal of discretion up to the superintendent to interpret policies to support what he or she wants to do. In addition, it is normally the superintendent and other staff who identify the issues about which the board will make policy, supply all of the information which they think relevant, and propose what the policy should be. As a result, the actual citizen control of school systems is very limited and, despite what seems to Europeans an extreme decentralization, so is the decision-making authority of the principal in each school.

The superintendent’s desk is where overall responsibility rests in a school system, subject to appeal to the school board, to state officials, and then to the courts. Many superintendents find themselves constantly putting out fires of various kinds, including political demands, in a way which prevents them from doing the sort of strategic planning that they are expected to do. Even in these cases, however, it is unusual for school administrators to admit that they have changed anything because of pressure by non-educators. It is more common, however, for them to act cautiously to avoid controversy, or to change what they are doing because of pressure without admitting that they are doing so.

They also find that their own decisions are constrained by state laws and federal funding requirements. Even their own headquarters staff often tell them that they cannot do this or that because program guidelines don’t allow it; as a result, superintendents “must treat their own federal coordinators as representatives of an outside power.” Nor can they move staff around as they will, in most school systems, because of the detailed provisions of union contracts. As a result, leadership of a school system requires a great deal of patience and strategizing to achieve changes which only occur over the course of extended periods of time.

But patience and time is what many superintendents don’t have. Many stay less than three



years in the job before moving on to another district – or to unemployment – and this is especially true of urban superintendents. Superintendents are employees on contract of the local school board, and not representatives of a higher level of government, as would be the case in countries with a centralized system of educational governance. Some start looking for their next job almost before they have moved into their offices and learned the names of their top staff. In order to make their mark and build their reputations, they are rarely content to continue to implement the policies laid out by their predecessors. New initiatives rather than steady persistence seem to represent vigorous leadership in the superintendency.

What's more, the growing demand for results in this era of highly-publicized state testing forces superintendents to find ways of convincing the media and the public that they are in command and have the solution to the often-dismal performance of their students. Since, as we have seen, there are severe limits on a superintendent's real ability to influence what happens in classrooms, he or she can create the impression of leadership by announcing new initiatives which cannot be expected to pay off for years . . . by which time he or she may be on the way to the next job. "The difficulties in accurately assessing urban district outcomes mean that evaluations of district policymakers are influenced only modestly by their actual impact" (Hess, 111).

A careful study of 57 urban school districts concluded that "reform, rather than being the remedy to what ails urban schools, has generally been a distraction and a hindrance." The author describes as "policy churn" the tendency of urban superintendents to start many different initiatives, most of which are never implemented to a point which could produce real success. "The irony of school reform," he concludes, "is that the sheer amount of activity—the fact that reform is the status quo—impedes the ability of any particular reform to have a lasting effect" (Hess, 121).

The effective superintendents tend to be those who are willing to stay in the same district for the long haul, and who concentrate on the unglamorous basics of improving instruction and accountability. In particular, they work at putting into key positions staff who they can trust to follow through, though this may take years to accomplish. These quiet but very significant efforts seldom get noticed favorably in the press, but they can make all the difference over time.

### **What principals decide**

One of the advantages of policies which allow parents to choose among schools – like those implemented in sixteen Massachusetts cities during my years in government – is that they make it both *necessary* and *possible* for a school administrator to improve the school in ways which will give parents a reason to choose that school rather than others. The buck-passing characteristic of many urban schools, in which principals and teachers blame their lack of success upon pupils and their families, is transformed when it is those families whose decisions will signal whether or not a school is meeting their expectations for a good education. Under a school choice policy, principals must become leaders with a convincing vision.

According to the study of "policy churn" in urban school systems, school choice also has the result of increasing system-level accountability for results, since "choice plans that permit students to sort themselves by interest and ambition make it easier for parents and community members to evaluate [school] system performance. More homogeneous student bodies reduce the number of competing expectations and make it relatively easier to benchmark system

performance against clear sets of desired outcomes” (Hess, 123).

There has been a great deal of emphasis lately on the importance of the role of the principal. Effective schools, we are told, have principals who are instructional leaders and who are effective in shaping the teachers and students and parents into a team with a shared vision. “High and low performance schools appear to be distinguished more by their leadership, professionalism, and teamwork . . . than by their graduation requirements, or homework and writing assignments” (Chubb and Moe, 99).

I believe that this emphasis is correct, but there are many things which work against principals being strong leaders. Indeed, “the conventional wisdom, that excellent public schools require charismatic leadership, is a tacit admission that the governance structure is hostile to quality” (Hill, Pierce and Guthrie, 29). I will mention a few of these impediments to leadership.

- School boards adopt policies which function somewhat like government regulations, though they do not have the force of law, and which severely limit the discretion of principals to make decisions. Many of these policies derive from collective bargaining agreements with the teacher, administrator, and other unions. The school board might agree, in its contract with the local teachers’ union, that teachers will attend school meetings for only a limited number of hours during the year and must be paid for any time spent on school-wide planning activities. Teachers would be expected by their union to refuse to take part in school-related tasks that went beyond the limits specified in the contract, or for which they were not paid, even if they were eager to do so. Obviously, school systems with elaborate policies of this sort make it very difficult for creative teachers and principals to transform their schools; this helps to account for the slow rate of change and also for much of the burn-out of committed and imaginative educators.
- School systems—especially large ones—are also likely to have elaborate procedures for doing almost anything, and these are laid on top of federal program guidelines and a multitude of state requirements. “None of these groups want schools to be hopelessly tied up in rules, mandates, and limitations; each thinks the requirements it imposes will make schools better” (Hill, Pierce and Guthrie, 31). Principals in big cities spend an enormous amount of time trying to get around procedures.
- There can also be a great deal of paperwork, especially for those principals who work at getting grants from various sources to strengthen their schools. Some principals spend all their time in their offices and seem scarcely to know what is going on in their schools; others are on the move all day to visit classes and generally keep everything moving along, but then must work late into the evening catching up on the paperwork. Central office administrators constantly think up new reporting requirements, to ensure that the policies adopted by school boards are implemented uniformly in every school. In addition, schools which serve many at-risk pupils – or pupils in trouble with the law – often must spend an inordinate time dealing with other bureaucracies, even though these are the schools which most need the full attention of a strong leader.

It’s not that central administrators are trying to make life difficult for those in schools, but that “bureaucracy arises naturally and inevitably out of . . . efforts at democratic control of school systems.” School boards are very reluctant to adopt policies which apply to one school but not to another.

As a result, detailed formal specifications in legislative mandates and administrative regulations are voluminously imposed on all concerned, so that the schools' scope for discretionary action is sharply narrowed . . . and the discretion that remains is then insulated from political control through extensive reliance on civil service, tenure, (nominal) professionalism, and other structural means. Schools are thus subject to democratic control, but they are purposely made difficult to control. Schools are filled with "professionals," but their personnel are systematically and intentionally denied the discretion they need to act as professionals. Schools give the appearance of substantial autonomy, but what they have is insulation without discretion—which is really not autonomy at all. (Chubb and Moe, 45).

In no respect is school-level autonomy and the authority of the principal more important than in making decisions about who will teach in the school, with what assignments. A cross-national study concluded that only 8 percent of personnel decisions are made at the school level in American public intermediate schools, compared with 100 percent in Britain and 79 percent in the Netherlands. *All* decisions about the organization of instruction were made at the school level in five other countries, and in only two out of the twenty countries studied was the proportion of school-level decisions lower than the 69 percent in the United States. This seems odd, since all of these countries have more centralized education systems than does the United States; the difference is that the central administration of local school systems – the upper levels of the bureaucracy – tend to monopolize decisions in the decentralized American system (Centre for Educational Research and Innovation, OECD, pp. 300-301).

Some principals, however, seem able to perform miracles, and know how and when to ignore regulations and procedures and paperwork demands which are unimportant. They are in constant touch with each teacher and know just where each is having difficulty; they seem to know the names and family circumstances of all the children in their schools. But there can be no question that gifted principals find it easier to devote their energies to being educational leaders when they are not subject to constant bureaucratic constraints and outside interference. This is one more reason why there is so much interest in "charter schools" and other arrangements increasing the autonomy of individual public schools, and in vouchers as a way to permit parents to choose nonpublic schools.

Reformers have turned to such radical solutions because of the obvious failure of decades of experimentation with decentralization and "school-based management" (SBM) within the existing structure of school systems. One careful review of the literature found that "the enthusiasm for SBM, expressed in hundreds of articles and papers, does not, on the whole, stem from positive student achievement results." In other words, people believed in school-based management because it seemed like a good idea, not because it has led to any improvements in student outcomes. The bottom line of the review was "that there is no collective evidence of positive effects" (Summers and Johnson, 76).

As a result, critics of the existing system like political scientists John Chubb and Terry Moe argue that "schools do indeed perform better to the extent that they possess the effective school syndrome of organizational characteristics – to the extent, in other words, that they have such general qualities as clear goals, an ambitious academic program, strong educational leadership, and high levels of teacher professionalism. . . [But] America's existing system of public education inhibits the emergence of effective organizations. This occurs, most fundamentally, because its institutions of democratic control function naturally to limit and undermine school autonomy" (Chubb and Moe, 23).

## What teachers decide

I have mentioned excessive regulation and “policy churn” two distinct problems of public school systems, and especially large ones in cities. One of the unfortunate results of both is that many teachers become passive and cynical about their work. New initiatives, new directives, even new resources come to seem, for such teachers, a useless hassle. “Policy churn punishes teachers who throw themselves into reform efforts. . . . Those teachers who invest their energy, disrupt their classrooms, and sacrifice their time find their efforts wasted if reforms dissipate. Veteran teachers quickly learn to close their classroom doors and simply wait for each reform push to subside” (Hess, 122).

In general, as you might expect, teachers report that they have more control over what goes on in their classroom than over what goes on in their school as a whole. For example, 55 percent of those surveyed a few years ago said they had “a good deal of control” over the textbooks and other materials they used, 60 percent said they could choose the topics and skills they would cover, and nearly 87 percent reported that they could decide on teaching techniques, grading students, and how much homework to assign. Less than 35 percent, by contrast, said that they had “a good deal of influence” over discipline policy and the school’s overall curriculum.

It is worth noting that, in every case, private school teachers reported that they had more influence or control over their work than did public school teachers, and in some cases the difference was very significant. On discipline policy, for example, 34.9 percent of public school teachers and 59.2 percent of private school teachers reported that they had “a good deal of influence.”

Secondary school teachers reported that they had more control than did elementary teachers in the areas of instructional materials and the topics and skills to cover, but less influence over disciplinary policy. This last is not surprising, since most high schools have quite formalized procedures for discipline (National Center for Education Statistics 1998, 122).

It does not appear, then, that public school teachers are forced into lock-step teaching. In fact, “many teachers can find ways to work their will in classrooms despite formal subordination to higher-level authorities, in part because there is so little local infrastructure to support higher-level guidance.” Under those conditions, “incentives to improve performance based on [standardized test] scores seem likely to remain diffuse and relatively weak unless all teachers in a school are somehow made to feel responsible for what students do on the tests” (Cohen, 115, 119). There is in fact “evidence of wide variations from classroom to classroom in what gets taught and how it is taught . . . Claims that teachers are overly constrained by central policies and that freedom from these constraints would unleash creative energies and more productive teacher behavior are, at best, overstated.” (Hannaway, 99).

Not that the wide discretion which teachers enjoy within their classrooms is all good news. As reformer E. D. Hirsch, Jr., has pointed out, the wide variation in student achievement in the United States may be attributable in part to the wide variation in what is taught, and when, and how. Arguably, one of the reasons to promote the autonomy of individual schools and the role of the principal as a strong instructional leader is that this would place, more than at present, “operating and performance responsibility with agents who are closer to teachers. So any positive benefits of [school-based management] may actually come from *decreasing* rather than

*increasing* the discretion of individual teachers!” (Hannaway, 99). In particular, principals with greater authority could ensure that common educational goals are met.

Does this suggest that teachers are incapable of making good professional judgments about how they should teach? Not at all. Though no doubt there are many incompetent teachers, this is more an indictment of the bureaucratic nature of the public education system, abetted by elaborate procedures required by union contracts, than of the teaching profession as a whole. There are very many gifted and resourceful teachers in public school classrooms, but their efforts have been less effective than they should have been because of our lack of clarity about what education should be accomplishing. One of the goals of school reform is to ensure that there are far more teachers who can make good use of expanded professional autonomy. Standards for education – what students should know and be capable of doing at each level – should be specified in some detail, and then the teachers and principal in each school should be given wide discretion to decide how they will achieve those goals. John Dewey argued that the teaching profession should determine the goals of education. I disagree: that decision should not be the exclusive privilege of educators. Determining the goals of education in a free country is always a balancing act between the desires of parents, the interests of children, and the needs of society and the economy. The competence which makes – or should make – teaching a true profession is knowing how to meet such demanding standards.

### **What parents decide**

There are three ways, basically, in which parents can influence how and what their children learn. The first is by what they do at home day by day, from birth on, including the friends and activities that they seek out for their children. The second is by the schooling they choose through decisions about where they live, or through using public school choice programs, or through paying for private schools. The third is by direct involvement in the schools their children attend, whether on advisory committees or in classrooms or at open houses.

Probably the least effective – though not unimportant – way for parents to be involved is the third, their physical presence in their children’s schools. It is certainly a good thing for parents to participate on advisory committees, or to come in and help out in the classroom, or to visit the school on parent nights. All of those should be encouraged, but if parents do not show their faces much teachers and principals should not become convinced that they do not care or are not actively supporting the school’s mission. These days there are fewer and fewer at-home mothers who are free to drop in during the day, and evening meetings can be hard for all concerned, especially if the school is a long way from home. It is especially difficult to persuade parents with limited education to feel comfortable as members of advisory committees, and in fact these committees tend to be so tightly controlled by school officials that many parents come to feel that their participation is pointless.

Even in countries like France and The Netherlands, where government has mandated parent advisory committees, they serve more to co-opt parents in support of professional agendas than to affect the decisions made by principals and teachers (Ballion). An American example is provided by the national Parent/Teacher Association, which follows faithfully the line set by the teacher unions . . . and, as a result, has seen a dramatic drop in membership, as parents turn to more independent local parent groups. No, low parent participation in school-based activities should not be too discouraging, if there is good evidence that parents are doing what needs to be done at home in support of their children’s learning. Research suggests that “schools do not seem to benefit in a large or systematic way from direct parent participation. It is more likely

that they benefit from the various forms of support and encouragement parents can provide for school objectives in the home" (Chubb and Moe, 164).

It is in the home, not at the advisory council meeting, that parents make the most significant decisions about their children's education: when to turn off the television, what to talk about over dinner, how to deal with tantrums over homework. This is unquestionably one of the main reasons that the achievement of Asian-American pupils in the United States is significantly higher, on average, than that of all other pupils, even though many of their parents are immigrants and lack the language skills and confidence to be directly involved in the school. The challenge for school staff is to find effective ways of communicating with all parents about what they can do to support the education provided by the school, as well as to continue the many forms of education which parents are especially able to provide.

Parents also make a very important decision when they decide what school their children will attend, though in fact most school systems do not encourage them to consider this one of their responsibilities. School choice is exercised primarily by parents who can afford to choose where they will live; this is substantially more common than choice through paying tuition to a private school. Suburban real estate agents, aware of the importance of the school factor, make a point of keeping on hand the latest figures on comparative test scores and other school information that might influence the decision to buy or rent in one area rather than another. As a result of this mediation of choice through residential selection, "higher income parents have more options available to them at each stage of the search process; they can purchase high-priced homes in "good" school districts, and they can purchase private education." Thus "higher family income facilitates both public and private school choice." In 1997, of families with incomes over \$50,000, 72 percent had their children in private schools, public schools of choice (such as magnet schools), and schools which had been selected through residence decisions, primarily the last (Choy, 5-6). Contrary to a widespread impression, it is the public schools in affluent suburbs and not private schools – except for the minority of "prep schools" – which represent the elite option in American education. Middle income families, and not the wealthy, are the most likely to use non-public school, since those below them in income are less able to pay tuition, and those above them more able to live in areas with the most desirable public schools (Darling-Hammond and Kirby, 254).

Nationwide, according to a government survey, between 1993 and 2003,

the percentage of students in grades 1–12 attending a "chosen" public school (a public school other than their assigned public school) increased from 11 to 15 percent, while the percentage attending assigned public schools decreased from 80 to 74 percent. The percentages of students attending private schools also increased during this period (0.9 percentage points for private church-related schools [to 8.4 percent of all pupils] and 0.8 percentage points for private not church-related schools [to 2.4 percent]); these increases, however, were smaller than the increase in the percentage of students attending chosen public schools. Public school choice programs allow students to enroll in another public school or district outside their attendance area without justification based on special needs. These programs can include within-district or out-of-district schools.

The change was most striking among pupils from low-income families, of whom the proportion attending assigned schools fell from 83 to 74 percent. "Black students compared with White or Hispanic students (42 vs. 22 and 27 percent, respectively), as well as students in the South compared with students in the Midwest (30 vs. 22 percent), were more likely to attend chosen

public schools” (<http://nces.ed.gov/fastfacts/display.asp?id=6>).

Of course, we can't forget that many parents also exercise choice by sending their children to private schools with the help of voucher programs and private school scholarships funded by tuition tax credits. In 2005, “well over 100,000 students” were attending private schools with the help of such school choice initiatives (Enlow, 11).

Whatever sort of school they choose – and can afford to choose – there is a growing body of research suggesting that parents who *do* choose a school make a positive difference in their children's education. Even the opponents of school choice tacitly concede this advantage by arguing that it is unfair that pupils whose parents who have their act together well enough to make use of choice opportunities have an advantage over pupils whose parents fail to do so.

But surely it would not be good public policy to discourage parents from sending their children to the best schools they can find, schools which they can support without reservations. The real policy challenge is to make sure that family income does not limit that choice. An important decision by the US Supreme Court in 1925, *Pierce v. Society of Sisters* (268 U.S. 510), stated that

the fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

The Court reaffirmed this position in a 2000 case called *Troxel v. Granville* (530 U.S. 57), asserting “the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” Children do not belong to the state or the society, or even the “village.” In the final analysis, of course, children ‘belong’ to themselves, but it is (except in very unusual circumstances) their parents who have authority, under our system, to make decisions for them until they are mature enough to make decisions for themselves.

On the other hand, teachers are often discouraged to find that some parents do not support their efforts to demand high-level performance from their pupils. This was confirmed by a study which found that “by a two-to-one margin (60 to 28 percent), American parents say that ‘if forced to choose, they would prefer their sons or daughters to make C grades and be active in extracurricular activities rather than make a grade and not be active’” (Bishop and others, 141).

### **What students decide**

All the best efforts of school boards and superintendents, of principals and teachers and parents will be wasted if students decide they will not learn. It might seem obvious that students would understand that learning must be their highest priority in school, but that is not necessarily the message which they receive from the society or from their schools. One of the best books about American high schools compares them to shopping malls, where students can pick and choose among options which are more or less demanding of effort. “High schools accommodate diverse student purposes,” the authors write, “not only by offering a broad choice-based curriculum, but also by offering different levels of *commitment* to that curriculum.” Unfortunately, they point out, “in leaving choice to students and their families, schools unintentionally perpetuate the distinctions that high school is supposed to eliminate” (Powell,

Farrar and Cohen, 117, 171), because the social class and other distinctions with which students come into a school largely determine the choices which they make among the programs available.

This may help explain why Catholic high schools – which offer less choice about what to study and whether to make an effort – seem to be more effective with minority youth than are public high schools.

Instead of a neutrality shaped by conflicting values among school participants, private schools seek agreement about institutional purpose. Ideally families and schools are fused in a single community of values. . . . instead of promoting individualization by the presence of boundless opportunities and the absence of restraints, private schools attempt to promote it by giving intimate personal attention. . . . Agreement about school purpose is especially important for average students. But many teachers accept as inevitable and desirable the neutrality of the shopping mall high school. It is the price that has to be paid to accommodate the entire spectrum of adolescent values and capacities. One teacher admitted that his school had no clear commitment to learning, only a clear commitment to accommodating student diversity (Powell, Farrar and Cohen, 199).

But public schools with a distinctive mission, like many charter schools, can manage to create a school culture which is so powerful that the students buy into it.

### **School distinctiveness protected by law and policy**

There are very few government limitations upon the distinctiveness of independent schools, though most states require local public school systems to ensure that the standard of education provided in local independent schools are generally comparable to that in the public schools. This is, obviously, a vague standard, and its enforcement has in some cases been successfully resisted.

Government oversight of nonpublic schools occurs in a variety of ways even in the absence of public funding.

The state can mandate that the instructional language be English (*Meyer*). The state can require private schools to provide an education that is “basic,” “equivalent [to public education]” (*Yoder*, 406 U.S. at 213), or an “adequate education” (*Wolman v. Walter*, 433 U.S. 229, 240 (1977)) that meets “minimal educational standards” (*Yoder*, 406 U.S. at 239). The state can regulate the “quality and nature” (*Board of Education v. Allen*, 392 U.S. 236, 245 (1968)) of the curriculum consisting of “elemental skills” (*Wolman v. Essex*, 342 F.Supp. 399, 411, aff’d, 409 U.S. 808 (1972)) and “prescribed subjects of instruction” (*Allen*, 392 U.S. at 246 (1968)) “necessary for a productive and valuable life” (*Wolman* 342 F.Supp. at 411). The state may also set the standards requiring “minimum” hours of instruction (*Allen*, 392 U.S. at 246). Teachers may also be examined to ensure that they have received “specified training” (*Allen*, 392 U.S. at 246). The state may also inspect schools to ensure that they are in compliance with “fire inspections. Building and zoning regulations” (*Lemon v. Kurtzman*, 403 U.S. 602, 614 (1971)) and “safety standards” (*Wolman*) (Randall, 75).

Despite this broad potential for interference, a state's excessive regulation may not eliminate



the parent's right to direct the education of the child. In 1923, the Supreme Court struck down a Nebraska statute that prohibited the teaching of German to elementary school age children. The Court determined that the law unreasonably interfered with the power of parents to control their children's education (*Meyer v. State of Nebraska*, 262 U.S. 390). Similarly, in 1927, the Supreme Court held a Hawaiian law unconstitutional that regulated the teachers, curriculum, and textbooks of private Japanese language schools and placed control of the schools in public officers. "Enforcement," the Court said, "would deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful" (*Farrington v. Tokushige*, 273 U.S. 284, 298).

In 1976, the Ohio Supreme Court heard a constitutional challenge to the state's "minimum standards" governing nonpublic schools. The state court determined that the standards were "so pervasive and all-encompassing that total compliance with each and every standard by a non-public school would effectively eradicate the distinction between public and non-public education, and thereby deprive these appellants of their traditional interest as parents to direct the upbringing and education of their children" (*Ohio v. Whisner*, 351 N.E.2d 750, at 768).

The challenge to state legislators in regulating private schools, then, is to draft legislation that 1) respects the fundamental right of parents to direct the education of their children, 2) protects the state's interest in an informed citizenry but avoids interference with religious beliefs unless compelling interests are at issue, and then only in the least restrictive manner, and 3) avoids comprehensive regulation of private education that would deprive parents of any choice in education. Different states have found different solutions to this challenge. Typically, responsibility is placed upon local public school systems (of which there are more than 15,000 in the United States) to ensure that pupils resident within their boundaries are attending schools (or receiving instruction at home) equivalent in scope and quality to that provided by the public system (see Glenn 2000, 42-61).

### *Distinctive character*

The largest system of private schools in the United States is operated by the Roman Catholic Church, though this sector has become less dominant than it was in 1970, when about 70 percent of private schools were Catholic. In 1999-2000, 48.6 percent of nonpublic school pupils were in Catholic schools, and another 35.7 percent in other religious schools; the number of pupils in evangelical Protestant (773,237 or 15 percent of the total) and Jewish schools (169,761 or 3.3 percent) has been growing rapidly. There were 18,262 pupils in Islamic schools (National Center for Education Statistics 2001b, 6).

Approximately three-quarters (77 percent) of private school students were white, non-Hispanic [Fall 1999]; while 9 percent were black, non-Hispanic; 8 percent were Hispanic; 4 percent were American Indian/Alaska Native; and 5 percent Asian/Pacific Islander. Almost half (49 percent) of all private school students attended schools that were located in urban areas (central city) . . .

The minority proportion in Catholic schools was 24.2 percent, while that in conservative Protestant schools was 23.1 percent (National Center for Education Statistics 2001b, 2, 21).

The three types of Catholic elementary and secondary schools are parochial schools (4,507 parochial schools account for about 16.9 percent of the 27,223 nonpublic schools in the

country, but 25.3 percent of the pupils), which are associated with particular parishes; diocesan schools, which are associated with the larger diocesan unit; and private order schools, which are associated with specific groups within the Catholic church, such as the Christian Brothers, Dominican, Jesuit, and Marianist Orders.

Most parochial school principals report that their schools' most important education goal was religious development. Catholic parochial schools have long been a part of American education: 19 percent of currently operating schools were founded before 1904, compared to 11 percent of private schools in general; and only 13 percent since 1964, compared to 54 percent of private schools overall. Catholic parochial schools were distributed throughout the United States, but they were concentrated more heavily in the Midwest (40 percent) and Northeast (32 percent) than private schools in general.

In 1993-94, there were about 2,400 Catholic – diocesan schools in the United States, serving almost 800,000 students in grades K-12. The most important goal of Catholic – diocesan schools, as rated by their principals, was religious development. Like other Catholic schools, diocesan schools have a long history in American education. Almost one-quarter of them were founded before 1904, and only one-sixth since 1964, compared to about one-tenth and more than one-half for private schools in general.

Unlike Catholic parochial schools, which were primarily elementary-only schools, about one-fifth of diocesan schools served only the secondary levels; diocesan schools were nearly all coeducational; and only 7 percent of Catholic diocesan schools had no minority students, compared to 19 percent of private schools in general. Like other private schools, virtually all Catholic diocesan schools charged tuition, though at rates very significantly lower than those at non-religious private schools.

Significantly more private order Catholic schools (56 percent) served only secondary students, compared to other Catholic schools and private schools in general. Their principals rated academic excellence and religious development as the most important education goals of their schools, about one-third rating each as most important.

The largest category of non-Catholic schools consists of the conservative Protestant schools. In 1993-94, the 4,664 conservative Protestant schools represented nearly 40 percent of all non-Catholic religiously oriented schools in the United States, and one-fifth of all private schools in the nation, enrolling 641,828 students and employing the equivalent of 44,841 full-time teachers. Half of these schools were members of the Association of Christian Schools International. Religion is an especially important facet of these schools, as attested by the responses of principals, 80 percent of whom indicated that religious development was among the three most important educational goals of their school.

Conservative Protestant schools are relative newcomers in America education history – 9 out of 10 currently operating were founded since the mid-1960s. Although they are located in all regions of the country in 1993-94, relatively more are in the South (38 percent) than in other regions. Nearly all conservative Protestant schools are coeducational and serve diverse student bodies.. Although the schools charge tuition, like other private schools, nearly all offer discounts, and their tuition is significantly lower than for private schools overall. Only 2 percent of elementary schools and only 8 percent of schools serving secondary-level students had annual tuition greater than \$3,500 ([nces.ed.gov/pubs/ps/97459ch3](http://nces.ed.gov/pubs/ps/97459ch3)).

There are 1,500 “independent schools,” 1,025 of which belong to the National Association of Independent Schools (NAIS). This term has been appropriated by a sub-set of nonpublic schools that are in most cases selective and charge high tuition. Enrollment in NAIS schools, now 473,000, has been increasing gradually throughout the 1980s and mid-1990s. Tuition in member day schools ranges from a few thousand to over \$10,000 and in seven-day boarding schools median tuitions are approximately \$20,000. In 1998-99, 16.1 percent of students in NAIS schools received need-based financial aid, with an average grant of \$7,318.

NAIS membership includes day schools, boarding schools, and combinations; 83.7 percent are coeducational, 8.9 percent girls’ schools, and 7.4 percent boys’ schools. Enrollment of students of color has grown stronger in recent years and now stands at 17.8 percent. NAIS schools vary in size from a few dozen students to several thousand in urban, suburban, and rural settings ([www.nais.org/nais](http://www.nais.org/nais)).

### *Decisions about admitting pupils*

Both federal and state law prohibit discrimination in admission to public schools (including magnet schools and charter schools) on the basis of race, sex (an exception is made for single-sex charter schools), national origin, and other protected categories, and require that school systems accommodate handicapped pupils in “the least-restrictive environment” consistent with their needs (Office for Civil Rights, 5). Exceptions have been ordered by the courts in many situations over recent decades to permit race to be used as a basis for assignment of pupils in the remedial phase of a school desegregation case, though this is becoming less common, as will be discussed at a subsequent session.

Concerns have been raised about whether public magnet schools and (more recently) charter schools ‘cream’ the pupils who are easiest to educate, or perhaps increase racial isolation in urban districts. Magnet schools are specifically designed to achieve a desirable racial balance through admitting pupils in some predetermined racial proportions, though this may have the effect of causing the schools from which they draw to become racially imbalanced.

Charter schools, while forbidden to discriminate on the basis of race, are not generally required to achieve any particular racial proportions. Nationwide, 39 percent of charter school pupils as contrasted with 37 percent of pupils in regular public schools were from low income families in 1998-99, but there was considerable variation among the states. In Michigan and Texas, for example, charter schools were significantly more likely to serve low-income pupils than the regular public school average, while the opposite was the case in California. The pattern was similar with respect to race: charter schools nationwide enrolled 52 percent nonwhite pupils, compared with 41 percent in regular public schools, but there was variation among states (Gill, Timpane, Ross and Brewer, 153).

Some states give preference in approving charters to schools that will serve at-risk populations, which generally means low-income and minority pupils; “Louisiana mandates that charter schools have a proportion of at-risk students that is at least 85 percent of the proportion of at-risk students within the district as a whole” (Nelson, Muir and Drown, 42). Texas “gives favorable treatment to charter schools serving at least 75 percent at-risk students; such schools may serve their students well, but they are likely to be stratified by class and race” (Gill, Timpane, Ross and Brewer, 180).

Nationwide, magnet and charter schools may serve a larger proportion of black and Hispanic pupils than do regular public schools, but controversy has arisen over the failure of some to admit pupils with special educational needs and handicaps, on the grounds that they cannot provide appropriate services. Nationwide, in 1998-99, "students with disabilities constituted 11 percent of conventional public school enrollments and 8 percent of charter-school enrollments" (Gill, Timpane, Ross and Brewer, 155).

Some states allow charter schools to establish enrolment criteria which will enable them to pursue their distinctive educational mission. Gill, Timpane, Ross and Brewer (11n) identify Connecticut, Delaware, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Virginia as states that permit charter schools to set enrolment criteria.

Controversy has also arisen over proposals to meet the needs of at-risk pupils through establishing, for example, a school serving only African-American boys, with an all-male staff, or a school serving only adolescent girls considered at risk of pregnancy and premature leaving school. In a few cases such initiatives have been able to withstand legal challenge (Glenn 1995).

Nonpublic schools may establish their own criteria for admitting pupils, though an overt use of race as a criterion would be very likely to lead to a challenge from government regulators as well as loss of the school's tax-exempt status; such instances have grown extremely rare. Single-sex nonpublic schools are less and less common, though more to maintain enrolments than because of legal concerns. Schools with a distinctive religious character are free to use religious criteria in admissions decisions (see Glenn 2000, 193-211).

Most Catholic parochial schools, like other elementary schools in the private sector, do not have special requirements for admission other than proof of immunization, age, and residence. A significant proportion of the enrolment in Catholic education, and especially in urban schools, consists of non-Catholic pupils.

Of "other religious" (neither Catholic nor conservative Protestant) schools, 28 percent used religious affiliation as an admission criterion. Conservative Protestant schools took religious affiliation into account somewhat more than other private schools: 34 percent of elementary schools and 25 percent of other schools used it in admissions decisions

Among students at conservative Protestant schools, teachers perceived moderate and serious problems somewhat less frequently than in other private schools: only 5 percent saw physical conflicts among students and weapons as problems, compared to 10 percent in private schools overall; only 7 percent saw racial tension and poverty as problems, compared to 13 percent; and only 20 percent saw student apathy and lack of preparation as a problem, compared to 26 percent.

Academic requirements for graduation were similar to those in other private schools, 51 percent of secondary conservative Protestant schools required a year or more of foreign language instruction for graduation. The rates of graduation and application to college among twelfth graders were 98 percent and 98 percent, respectively, in conservative Protestant schools (nces.ed.gov/pubs/ps/97459ch3).

### *Decisions about staff*

Public schools are generally required to employ only teachers and administrators who hold the certification issued by their state, or by another state under an arrangement of mutual recognition of qualifications. State requirements for initial certification commonly include completion of a university-based program of teacher or administrator preparation, followed by successful completion of a probationary period before permanent certification is given.

State charter school laws in some cases (for example, Arizona, Florida, Massachusetts, Texas) exempt these schools from the requirement to employ only state-certified staff, and in other cases (Colorado) a waiver of the requirement is common. Charter schools usually have more freedom to replace under-performing teachers than do other public schools, and the evidence is that they make use of this freedom.

Most teachers in traditional public schools work under multi-year contracts negotiated between a [local government] school board and a teacher union. Matters are rather different in charter schools . . . . In only 4 percent of the surveyed schools did teachers work under multi-year contracts. In most schools (63 percent), teachers had one-year contracts. In a third of the schools, teachers had no contract at all.

As a result, “eighty percent [of the charter schools surveyed] indicated that they had terminated at least one teacher’s employment for poor performance ” (Podgursky & Ballou, 9, 13, 15).

Some states require private schools to employ state-certified teachers (a constant demand of the teacher unions), but most do not. In general, the elite independent schools prefer to hire teachers with a degree in the humanities or sciences rather than in education, while other nonpublic schools are often not able to afford to pay the higher salaries that state-certified teachers are able to obtain in public schools.

Schools with an explicitly religious character may make decisions about staff based upon religious considerations, though such decisions may be challenged if the school has not been consistent and explicit about the implications of its religious character for teacher behavior (see Furst and Russo, 306-307).

### *Teaching of values*

Teachers in public schools tend to be nervous about addressing questions of values and character, because of the persistent attacks from secularizing organizations upon anything that could be perceived as religious expression in schools. For example, the decision of a school system in the state of Maine to adopt the goals of the Massachusetts *Constitution* (above) led to a lawsuit on the grounds that this was an illegal introduction of religious themes in the schools.

In recent years, however, there has been an increasing openness, on the part of policy-makers and educators, to addressing issues of character in schools. There is, for example, new interest in a long-standing requirement in Massachusetts law that teachers “shall exert their best endeavors to impress on the minds of children and youth committed to their care and instruction the principles of piety and justice and a sacred regard for truth, love of their country, humanity and universal benevolence, sobriety, industry and frugality, chastity, moderation and temperance, and those other virtues which are the ornament of human society and the basis upon which a republican constitution is founded; and they shall endeavor to lead their pupils, as

their ages and capacities will admit, into a clear understanding of the tendency of the above mentioned virtues to preserve and perfect a republican constitution and secure the blessings of liberty as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite vices" (*Massachusetts General Laws*, Chapter 71: Section 30).

In a survey of state education officials conducted by the Center for the Advancement of Ethics and Character at Boston University, those from 36 states disagreed with and only one agreed with the statement "Schools should *avoid* teaching values or influencing moral development. Character education is not a responsibility of the school." None disagreed and those from 36 states agreed that "There exists a set of *core* values/virtues upon which most Americans agree, regardless of race, religion, class, or culture, which can and should be taught in school." On the other hand, only 16 states have legislative requirements for character education, and in 14 states (which may include some of the same) it is included in curriculum standards or goals. In only four states is this included in requirements for teacher training. In short, the general support for the importance of teaching about values is not, in most cases, supported with concrete requirements.

### **The American educational system and international standards for the Right to Education**

The *Convention against Discrimination in Education* (1960), Article 4 enjoins upon the States Parties to the Convention the obligation

- To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;
- To ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to *the quality of the education* provided are also equivalent; (emphasis added);
- To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity; and
- To provide training for the teaching profession without discrimination.

How does education in the United States measure up? Quite well on the first standard, apart from the high cost of higher education, which discourage many youth who are academically capable of continuing past high school, or which burden them with excessive debt from student loans when they graduate from college. This issue is beyond the scope of the present discussion, but it is worth noting that there is currently intense discussion about "replacing the federal subsidy of . . . interest payments while students are still in college [and thus encouraging them to undertake heavy borrowing] with post-collegial payment adjustments based on financial circumstances" (Cech), as in Australia, where university graduates repay more or less of the cost of their education based on their subsequent income level.

On the second standard, American education falls very far short: the differences in the quality of schooling among the states, and among districts within states, is dramatic. Test scores in

some states, like Massachusetts and Minnesota, are at the top of international league tables, while those in some other states is at the bottom, while within Massachusetts, for example, there are great differences among school districts, despite recent reforms. These issues will be discussed at length in the session on Accountability for School Quality.

America does little to address the third standard. Provisions for adult basic education are generally lacking, though they exist to some extent in connection with job training schemes. On a more positive note, the American educational system is more flexible than most about allowing second and third chances for those who have not done well in their earlier schooling, if they have sufficient determination to take advantage of them. The thousands of 'community colleges' across the country, for example, enroll many adults whose previous schooling was interrupted. The approval of 'home schooling' by all fifty states and the rapidly-growing phenomenon of 'cyber-schools' offering formal instruction on-line are other examples of this flexibility.

While there is on-going debate about the preparation of teachers, it does not appear that 'discrimination' is one of the problems which it faces.

It is difficult to generalize about education in a country as large and diverse as the United States, or to generalize about the education laws and policies of fifty states and fifteen thousand local government entities that actually control public schooling. This brief overview suggests that, as might be expected, the quality of education and the realization of international norms for the right to education are immensely uneven, and leave much room for improvement.

Charles L. Glenn, August 2009

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## Appendix: State Constitutional Provisions for Education

SOURCE: Education Commission of the States, Denver

### Introduction

Each state constitution articulates, to varying degrees of detail, the state's responsibilities for providing an education to its citizens. This ECS StateNote outlines and compares the provisions in each state's constitution that concern public education governance. For the purposes of this ECS StateNote, governance is defined as who makes what decisions, and in what manner. In public education, the "who" part of this definition is everybody from state legislators to parents. The "what" part of this definition covers everything from standards to professional development. The "in what manner" or "how" part of this definition is everything from decisions made autonomously to decisions made within a framework established by others.

### Summary

Each state constitution contains at least one of the following provisions:

- Establishing and maintaining a free system of public schools open to all children of the state
- Financing schools (in varying degrees of detail)
- Separating church and state, often in at least one of the following two ways:
  - Forbidding any public funds to be appropriated to or used for the support of any sectarian school
  - Requiring public schools to be free from sectarian control
- Creating certain decision-making entities (e.g., state board of education, state superintendent of education, local board of education, local superintendent of education);

although most state constitutions require at least some of these entities to be in place, they usually do not specify their qualifications, powers and duties.

## **State-by-State Review**

### **Alabama**

- # Requires the legislature to establish, organize and maintain a liberal system of public schools throughout the state for the benefit of the children of the state between the ages of 7 and 21 years.
- # Prohibits any money raised for the support of public schools to be appropriated to or used for the support of any sectarian or denominational school.
- # Provides that no religion be established by law; that no preference be given by law to any religious sect, society, denomination, or mode of worship; and that no one be compelled by law to attend any place of worship, nor to pay any tithes, taxes, or other rate for building or repairing any place of worship, or for maintaining any minister or ministry.
- # Forbids any more than 4% of all moneys raised or appropriated for the support of public schools to be used for the payment of teachers. Allows the legislature, by a vote of two-thirds of each house, to suspend this provision.
- # Vests general supervision of the state's public schools in a state board of education. Charges the legislature with establishing the method of state board member election. Charges the state board with appointing the state superintendent of education, who shall be the chief state school officer.
- # Allows the legislature to provide for the election of local board of education members in certain counties.
- # Provides for the election of the superintendent of education in a certain county.

### **Alaska**

- # Requires the legislature to establish and maintain a system of public schools open to all children of the state.
- # Prohibits any money to be paid from public funds for the direct benefit of any religious or other private education institution.
- # Requires that no law be made respecting an establishment of religion, or prohibiting the free exercise thereof.
- # Requires that public schools be free from sectarian control.

### **Arizona**

- # Requires the legislature to provide for the establishment and maintenance of a general and uniform public school system, which includes kindergarten schools, common schools, high schools, normal schools, industrial schools and a university.
- # Requires the legislature to provide for a system of common schools by which a free school is established and maintained in every school district for at least six months in each year and is open to all pupils between the ages of 6 and 21 years.
- # Requires that public schools be free from sectarian instruction.
- # Requires that no public money or property be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment.
- # Vests general conduct and supervision of the state's public schools in an appointed state board of education, a state superintendent of public instruction and county school superintendents.
- # Establishes the composition and method of appointment of the state board.
- # Requires that the state superintendent be a member, and secretary, of the state board.

### **Arkansas**

- # Requires the state to maintain a general, suitable and efficient system of free public schools.
- # Forbids any money or property belonging to the public school fund, or to the state for the benefit of schools or universities, to be used for any other than for the respective purposes for which it belongs.

# Provides that no man can, of right, be compelled to attend, erect or support any place of worship; or to maintain any ministry against his consent. Requires that no preference ever be given, by law, to any religious establishment, denomination or mode of worship above any other.

### **California**

- # Requires the legislature to provide for a system of common schools by which a free school is kept up and supported in each district at least six months in every year.
- # Prohibits any public money to ever be appropriated for the support of any sectarian or denominational school or any school not under the exclusive control of the officers of the public schools.
- # Forbids any sectarian or denominational doctrine to be taught, or instruction to be permitted (directly or indirectly), in any common schools.
- # Provides that free exercise and enjoyment of religion without discrimination or preference are guaranteed. Prohibits the legislature from making any laws respecting an establishment of religion.
- # Charges the legislature with providing for the appointment or election of a state board of education and a board of education for each county or for the election of a joint county board of education in two or more counties.
- # Creates an elected state superintendent of public instruction. Establishes the method of election and the terms of office for the state superintendent of public instruction.
- # Charges the state board of education, on nomination from the superintendent, with appointing one deputy superintendent and three associate superintendents.
- # Authorizes the legislature to provide for the incorporation and organization of school districts and high school districts.
- # Allows the legislature to authorize the governing boards of all school districts to initiate and carry on any programs or activities which are not in conflict with the laws and purposes for which school districts are established.
- # Allows each county to decide how to choose its local superintendent, either through voter election or county school board appointment.
- # Requires the county board of education to fix the salary of the county superintendent.
- # Allows two or more counties to unite and establish one joint board of education and one joint county superintendent of schools.
- # Requires the state board of education to adopt textbooks for use in grades 1 through 8 throughout the state, to be furnished without cost.

### **Colorado**

- # Requires the legislature to provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, so that all state residents, between the ages of 6 and 21 years, may be educated gratuitously.
- # Forbids any appropriation or payment from any public fund in aid of any church or sectarian society, for any sectarian purpose or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution controlled by any church or sectarian denomination. Forbids any grant or donation of land, money or other personal property to be made by the state to any church or for any sectarian purpose.
- # Requires public schools to be free from sectarian instruction.
- # Provides that the free exercise and enjoyment of religious profession and worship, without discrimination, are guaranteed; that no person be required to attend or support any ministry or place of worship, religious sect or denomination against his consent; and that no preference be given by law to any religious denomination or mode of worship.
- # Vests general supervision of the public schools in an elected board of education. Specifies the composition of the state board. Charges the state board with appointing a state commissioner of education.
- # Charges the legislature with providing for the organization of school districts, in each of which shall be established a board of education to consist of three or more elected directors, who will have control of instruction in the public schools of their respective districts.
- # Requires one or more public schools to be maintained in each school district for at least three months in each year. Allows the legislature to require that every child of sufficient mental and physical ability

between the ages of 6 and 18 attend the public school for a time equivalent to three years, unless educated by other means.

- # Allows for a superintendent of schools in each county. Establishes the terms of office for county superintendents of schools. Allows each county's electors to abolish this office.

- # Forbids the legislature or the state board from prescribing textbooks to be used in the public schools

### **Connecticut**

- # Requires the legislature to provide free public elementary and secondary schools.

- # Prohibits any laws to ever be made which authorize the school fund to be diverted to any other use than the encouragement and support of public schools.

- # Requires that no person by law be compelled to join or support, be classed or associated with, any congregation, church or religious association; that no preference be given by law to any religious society or denomination in the state; and that each religious society or denomination has and enjoys the same and equal powers, rights and privileges, and may support and maintain the ministers or teachers of its society or denomination, and may build and repair houses for public worship.

### **Delaware**

- # Requires the legislature to provide for the establishment and maintenance of a general and efficient system of free public schools.

- # Prohibits any property tax receipts received by a public school district as a result of a property tax levied for a particular purpose to be used for any other purpose except upon the favorable vote of a majority of the eligible voters in the district voting on the question.

- # Forbids any funds raised for educational purposes to be appropriated to or used by or in aid of any sectarian, church or denominational school.

- # Requires that no man be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; that no power be vested in or assumed by any magistrate that interferes with, or in any manner controls the rights of conscience, in the free exercise of religious worship; and that no preference be given by law to any religious societies, denominations or modes of worship.

- # Allows the legislature to provide for the transportation of students of nonpublic, nonprofit elementary and high schools.

- # Allows the legislature to require that every child attend public school, unless educated by other means.

### **Florida**

- # Provides that a paramount duty of the state is to make adequate provision for the education of all children residing within its borders, and that adequate provision be made by law for a uniform, efficient, safe, secure and high-quality system of free public schools that allows students to obtain a high-quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

- # Provides that the income derived from the state school fund, and the principal of the fund, be appropriated but only to the support and maintenance of free public schools.

- # Provides that there be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof, and that no revenue of the state or any political subdivision or agency thereof ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination, or in aid of any sectarian institution.

- # Provides that the governor and the members of his or her cabinet constitute the state board of education, which shall be a body corporate and have supervision of the system of public education. As of January 7, 2003, requires that the state board of education be a body corporate and have such supervision of the system of free public education as is provided by law, and that the state board of education consist of seven members appointed by the governor to staggered 4-year terms, subject to confirmation by the senate.

- # Creates an elected state commissioner of education, who shall supervise the public education system and be a member of the governor's cabinet. As of January 7, 2003, requires that the state board of education appoint the commissioner of education.

- # Provides that each county constitutes a school district. Allows two or more contiguous counties, upon vote of the electors of each county, to be combined into one school district.
- # Requires that there be, in each school district, a school board composed of five or more members chosen by vote of the electors for appropriately staggered terms of four years. Charges the school board with operating, controlling and supervising all free public schools within the school district and determining the rate of school district taxes within prescribed limits. Allows two or more school districts to operate and finance joint educational programs.
- # Provides for an elected superintendent of schools in each school district. Allows a school district, either through a district school board resolution, special law or vote of the electors, to change from an elected superintendent to an appointed superintendent. Establishes the terms of office for the district school superintendents.

## **Georgia**

- # Requires that the provision of an adequate public education for the state's citizens be a primary obligation of the state, free and provided for by taxation.
  - # Requires that school tax funds be expended only for the support and maintenance of public schools, public vocational-technical schools and public education.
  - # Provides that no money ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religionists, or of any sectarian institution.
  - # Provides for a state board of education, to be appointed by the governor and confirmed by the senate. Establishes the terms of office for state board members.
  - # Provides for an elected state school superintendent, who shall be the executive officer of the state board.
  - # Requires each school system to be under the management and control of an elected board of education.
- Charges each local board of education with appointing a school superintendent, who shall be the executive officer of the local board of education.
- # Grants authority to county and area boards of education to establish and maintain public schools within their limits.
  - # Allows the legislature to provide for the consolidation of two or more school systems, although no consolidation becomes effective until a majority of voters in each school system approves it.
  - # Allows two or more boards of education to contract with each other for the care, education and transportation of pupils.
  - # Allows the legislature to provide for the sharing of facilities or services by and between local boards of education under such joint administrative authority as may be authorized.
  - # Allows the legislature to provide for special schools and the participation of local boards of education in the establishment of such schools, although a majority of the voters must approve any bonded indebtedness or school tax levy.

## **Hawaii**

- # Requires the state to provide for the establishment, support and control of a statewide system of public schools.
- # Prohibits public funds to be appropriated for the support or benefit of any sectarian or private educational institution, with certain exceptions.
- # Requires that public schools be free from sectarian control.
- # Provides that no law be enacted respecting an establishment of religion or prohibiting the free exercise thereof.
- # Creates an elected state board of education. Specifies the composition and the method of election of the state board. Charges the state board with formulating statewide educational policy and appointing the state superintendent of education, who shall be the chief executive officer of the public school system.
- # Requires the state to provide for a Hawaiian education program consisting of language, culture and history in the public schools. Encourages the use of community expertise as a suitable and essential means in furtherance of the Hawaiian education program.

## **Idaho**

- # Requires the legislature to establish and maintain a general, uniform and thorough system of public, free common schools.
- # Forbids any appropriation or payment from any public fund in aid of any church or sectarian or religious society, for any sectarian or religious purpose or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution controlled by any church, sectarian or religious denomination. Forbids any grant or donation of land, money or other personal property by the state to any church or for any sectarian or religious purpose.
- # Requires that public schools be free from sectarian instruction.
- # Provides that the exercise and enjoyment of religious faith and worship forever be guaranteed; that no person be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; and that no preference be given by law to any religious denomination or mode of worship.
- # Vests general supervision of state educational institutions and the public school system in a state board of education. Requires that the state superintendent of public instruction be an ex officio member of the state board.
- # Allows the legislature to require that every child attend the public schools throughout the period between the ages of 6 and 18, unless educated by other means.

### **Illinois**

- # Requires the state to provide for an efficient system of high-quality public educational institutions and services, and a free education in public schools through the secondary level.
- # Provides that the state has the primary responsibility for financing the system of public education.
- # Forbids any appropriation or payment from any public fund in aid of any church or sectarian purpose or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution controlled by any church or sectarian denomination. Forbids any grant or donation of land, money or other personal property by the state to any church or for any sectarian purpose.
- # Provides that the free exercise and enjoyment of religious profession and worship, without discrimination, forever be guaranteed; that no person be required to attend or support any ministry or place of worship against his consent; and that no preference be given by law to any religious denomination or mode of worship.
- # Creates a state board of education. Allows the state board to establish goals, determine policies, provide for planning and evaluating education programs and recommend financing. Charges the state board with appointing the chief state educational officer.

### **Indiana**

- # Requires the legislature to provide for a general and uniform system of common schools, which shall be free and equally open to all.
- # Requires that the income of the common school fund be inviolably appropriated to the support of common schools and to no other purpose whatever.
- # Provides that no law, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience; that no preference be given, by law, to any creed, religious society or mode of worship; that no person be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; and that no money be drawn from the treasury, for the benefit of any religious or theological institution.
- # Creates a state superintendent of public instruction.

### **Iowa**

- # Provides that the general assembly make no law respecting an establishment of religion or prohibiting the free exercise thereof, and that no person be compelled to attend any place of worship, pay tithes, taxes or other rates for building, or repairing places of worship, or the maintenance of any minister or ministry.
- # According to an official at the Iowa Department of Education, the state of Iowa removed the education section from the Iowa Constitution and placed it in the Iowa statutes in 1864.

### **Kansas**

- # Requires the legislature to establish and maintain public schools, educational institutions and related activities.
- # Forbids any religious sect or sects from controlling any part of the public educational funds.
- # Provides that the right to worship God according to the dictates of conscience never be infringed; that no person be compelled to attend or support any form of worship; that no control of or interference with the rights of conscience be permitted; and that no preference be given by law to any religious establishment or mode of worship.
- # Charges the legislature with providing for an elected state board of education, which shall have general supervision of public schools, educational institutions and all the educational interests of the state. Establishes the number of state board members. Charges the state board with appointing a state superintendent of public instruction, who shall be the state board's executive officer.
- # Requires that local public schools under the general supervision of the state board of education be maintained, developed and operated by locally elected boards. Allows these local boards, under certain conditions, to make and carry out agreements for cooperative operation and administration of educational programs.
- # Prohibits any state superintendent of public instruction or county superintendent of public instruction to be elected.

### **Kentucky**

- # Requires the legislature to provide for an efficient system of common schools throughout the state.
- # Forbids any monies raised or levied for educational purposes to be appropriated to or used by or in aid of any church, sectarian or denominational school.
- # Provides that no preference ever be given by law to any religious sect, society or denomination, nor to any particular creed, mode of worship or system of ecclesiastical polity; that no person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; that no man be compelled to send his child to any school to which he may be conscientiously opposed; and that no human authority, in any case whatever, control or interfere with the rights of conscience.

### **Louisiana**

- # Requires the legislature to provide for the education of the people of the state, and establish and maintain a public educational system.
- # Provides that no law be enacted respecting an establishment of religion or prohibiting the free exercise thereof.
- # Creates a state board of elementary and secondary education to supervise and control the public elementary and secondary schools, vocational technical training and other special schools. Establishes the terms of office, and the methods for appointing and electing state board members.
- # Provides that the state board shall have no control over the business affairs of a parish or city school board, or the selection or removal of its officers and employees.
- # Allows the state board to approve a private school with a sustained curriculum or specialized course of study of quality at least equal to that prescribed for similar public schools. Provides that a certificate issued by an approved private school carries the same privileges as one issued by a state public school.
- # Provides for an elected state superintendent of education for public elementary and secondary education.
- # Requires the legislature to create parish school boards and provide for the election of their members. Charges each parish board with electing a superintendent of parish schools.
- # Allows any two or more school systems to be consolidated, subject to approval by a majority of the voting electors in each system affected.
- # Requires the legislature to appropriate funds to supply free school books and other materials of instruction prescribed by the state board.

### **Maine**

- # Authorizes the legislature to require towns to make suitable provision, at their own expense, for the support and maintenance of public schools.

- # Authorizes the legislature to encourage and suitably endow all academies, colleges and seminaries of learning within the state.
- # Provides that all persons demeaning themselves peaceably, as good members of the state, be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another ever be established by law, nor any religious test be required as a qualification for any office or trust, under this state; and that all religious societies in this state, whether incorporate or unincorporate, at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.

### **Maryland**

- # Requires the legislature to provide for the establishment of a thorough and efficient system of free public schools, and to provide by taxation for their maintenance.
- # Provides that the school fund be kept inviolate and appropriated only to the purposes of education.
- # Provides that all persons are equally entitled to protection in their religious liberty, and that no person be compelled to frequent, maintain or contribute, unless on contract, to maintain any place of worship or any ministry.

### **Massachusetts**

- # Requires the legislatures and magistrates to cherish the interests of literature and the sciences and all seminaries of them, especially the University at Cambridge, public schools and grammar schools in the towns.
- Requires the legislatures and magistrates to encourage private societies and public institutions for the promotion of agriculture, arts, sciences, commerce, trades, manufactures and a natural history of the country.
- # Forbids any grant, appropriation or use of public money or property or loan of credit to be made or authorized by the commonwealth for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the commonwealth or federal authority or both. Prohibits any such grant, appropriation or use of public money or property or loan of public credit to be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society.
  - # Provides that all religious sects and denominations, demeaning themselves peaceably and as good citizens of the commonwealth, be equally under the protection of the law; that no subordination of any one sect or denomination to another ever be established by law; and that no law be passed prohibiting the free exercise of religion.

### **Michigan**

- # Requires the legislature to maintain and support a system of free public elementary and secondary schools.
- # Forbids any public monies or property to be appropriated or paid or any public credit utilized by the legislature or any other political subdivision or agency directly or indirectly to aid or maintain any private, denominational or other nonpublic pre-elementary, elementary or secondary school.
- # Prohibits any payment, credit, tax benefit, exemption or deduction, tuition voucher, subsidy, grant or loan of public monies or property to be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any nonpublic school or at any location or institution where instruction is offered in whole or in part to nonpublic school systems.
- # Provides that no person be compelled to attend or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion; that no money be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; and that no property belonging to the state be appropriated for any such purpose.
- # Vests leadership and general supervision over all public education in an elected state board of education. Establishes the number, method of election and terms of office of state board members. Charges the state board with appointing a state superintendent of public instruction, who shall be the



chairman of the state board, the principal executive officer of a state department of education and responsible for the execution of the state board's policies.

# Allows the legislature to provide for the transportation of students to and from any school.

### **Minnesota**

# Requires the legislature to establish a general and uniform system of public schools and make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

# Forbids any public money or property to be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.

# Provides that no man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; that no preference be given by law to any religious establishment or mode of worship; and that no money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

### **Mississippi**

# Requires the legislature to provide for the establishment, maintenance and support of free public schools.

# Prohibits any funds to be appropriated toward the support of any sectarian school or to any school that at the time of receiving such appropriation is not conducted as a free school.

# Requires that public schools be free from sectarian control.

# Provides that no preference be given by law to any religious sect or mode of worship, but that the free enjoyment of all religious sentiments and the different modes of worship be held sacred.

# Creates an appointed state board of education. Establishes the method of appointment and terms of office for state board members. Delineates the state board's responsibilities. Charges the state board, with the advice and consent of the senate, with appointing a state superintendent of public education and a superintendent of public education in each county.

# Allows the legislature to make the office of county school superintendent elective, discharge the duties of county superintendent or abolish the office of county school superintendent.

### **Missouri**

# Requires the legislature to establish and maintain free public schools for the gratuitous instruction of all persons in the state within ages not in excess of 21 years.

# Forbids any appropriation or payment from any public fund in aid of any religious creed, church or sectarian purpose or to help support or sustain any private or public school, academy, seminary, college, university or other institution of learning controlled by any religious creed, church or sectarian denomination. Forbids any grant or donation of personal property or real estate by the state for any religious creed, church or sectarian purpose.

# Provides that no person be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion, but if any person voluntarily makes a contract for any such object, he shall be held to the performance of the same; that no money ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.

# Vests the supervision of instruction in the public schools in a state board of education, with its members appointed by the governor by and with the advice and consent of the senate. Sets the terms of office for state board members. Requires that there are never more than four members of the same political party on the state board. Charges the state board with selecting and appointing a commissioner of education.

### **Montana**

# Requires the legislature to provide a basic system of free quality public elementary and secondary schools.

- # Disallows any direct or indirect appropriation or payment from any public fund or monies or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university or other literary or scientific institution controlled in whole or in part by any church, sect or denomination.
- # Requires that public schools be free from sectarian instruction.
- # Requires that the state make no law respecting an establishment of religion or prohibiting the free exercise thereof.
- # Creates a state board of education, to be composed of the board of regents of higher education and the board of public education. Holds the state board responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems.
- # Creates a board of public education to exercise general supervision over the public school system, to be composed of the governor, the commissioner of higher education, the state superintendent of public instruction and seven members appointed by the governor and confirmed by the senate.
- # Requires that the supervision and control of schools in each school district be vested in an elected board of trustees.

### **Nebraska**

- # Requires the legislature to provide for the free instruction in the state's common schools of all persons between the ages of 5 and 21 years.
- # Forbids the appropriation of public funds to any school or institution of learning not owned or exclusively controlled by the state. Prohibits the state from accepting money or property to be used for sectarian purposes.
- # Allows the legislature to authorize the state to contract with institutions not wholly owned or controlled by the state for the provision of educational or other services for the benefit of children under the age of 21 years who are handicapped, if such services are nonsectarian in nature.
- # Requires that public schools be free from sectarian instruction.
- # Provides that no person be compelled to attend, erect or support any place of worship against his consent, and no preference be given by law to any religious society.
- # Creates the state department of education, to be composed of the state board of education and the commissioner of education. Provides that the state department has general supervision and administration of the school system of the state.
- # Creates an elected state board of education, to be composed of eight members. Establishes the terms of office for state board members. Charges the state board with appointing the commissioner of education, who shall be the executive officer of the state board and the administrative head of the state department of education.

### **Nevada**

- # Requires the legislature to provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year.
- # Prohibits public funds of any kind or character to be used for sectarian purposes.
- # Forbids any sectarian instruction to be imparted or tolerated in any school or university that is established under the state's constitution.
- # Provides that any school district which allows instruction of a sectarian character may be deprived of its proportion of the interest of the public school fund during such neglect or infraction.
- # Provides that the free exercise and enjoyment of religious profession and worship without discrimination or preference forever be allowed in the state.
- # Requires the legislature to provide for a superintendent of public instruction.
- # Allows the legislature to pass such laws as will secure a general attendance of the children at the public schools in each school district.

### **New Hampshire**

- # Requires the legislature to cherish all seminaries and public schools, and to encourage private and public institutions for the promotion of agriculture, arts, sciences, commerce, trades, manufactures and the natural history of the country.
- # Forbids the state from mandating or assigning any new, expanded or modified programs or

responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.

- # Prohibits any money raised by taxation to ever be granted or applied for the use of the schools or institutions of any religious sect or denomination.

- # Provides that the several parishes, bodies, corporate or religious societies at all times have the right of electing their own teachers and of contracting with them for their support or maintenance, or both; that no person ever be compelled to pay towards the support of the schools of any sect or denomination; and that every person, denomination or sect be equally under the protection of the law, and no subordination of any one sect, denomination or persuasion to another ever be established.

### **New Jersey**

- # Requires the legislature to provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the state between the ages of 5 and 18 years.

- # Forbids the legislature from diverting the public school fund from the support of the public schools.

- # Provides that no person be obliged to pay tithes, taxes or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform, and that there be no establishment of one religious sect in preference to another.

- # Allows the legislature to provide for the transportation of children between the ages of 5 to 18 years, inclusive, to and from any school.

- # Provides that no person be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools because of religious principles, race, color, ancestry or national origin.

### **New Mexico**

- # Requires that a uniform system of free public schools sufficient for the education of, and open to, all children of school age in the state be established and maintained.

- # Forbids any money appropriated, levied or collected for educational purposes to be used for the support of any sectarian, denominational or private school.

- # Provides that no person be required to attend any place of worship or support any religious sect or denomination, and that no preference be given by law to any religious denomination or mode of worship.

- # Creates a state board of education to determine, control, manage and direct public school policy and vocational educational policy. Sets the terms of office for state board members, some of whom are elected and some of whom are appointed by the governor with the consent of the senate. Charges the state board with appointing a superintendent of public instruction to direct the state department of public education.

- # Requires the legislature to provide for the training of teachers in the normal schools or otherwise so they become proficient in both the English and Spanish languages and are able teach Spanish-speaking pupils and students in the public schools and educational institutions of the state. Requires the legislature to provide proper means and methods to facilitate the teaching of the English language and other branches of learning to such pupils and teachers.

- # Allows those local school districts having a population of more than 200,000 to choose to have a local school board composed of seven members, who must be residents of and elected from single member districts.

- # Provides for the recall of any elected local school board member by the voters of a local school district.

- # Provides that every child of school age and of sufficient physical and mental ability be required to attend a public or other school.

### **New York**

- # Requires the legislature to provide for the maintenance and support of a system of free common schools, wherein all the state's children may be educated.

- # Forbids the state from using its property or credit or any public money, or authorizing or permitting either to be used directly or indirectly in aid or maintenance of any school or institution of learning wholly or

in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

# Provides that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, forever be allowed in New York to all mankind.

# Allows the legislature to provide for the transportation of children to and from any school or institution of learning.

### **North Carolina**

# Provides that the people have a right to the privilege of education, and it is the duty of the state to guard and maintain that right.

# Requires the legislature to provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year and wherein equal opportunities shall be provided for all students.

# Requires that the state school fund and the county school funds be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

# Provides that no human authority, in any case whatever, control or interfere with the rights of conscience; that no person be denied the equal protection of the laws; and that no person be subjected to discrimination by the state because of race, color, religion or national origin.

# Creates a state board of education to supervise and administer the free public school system and the educational funds provided for its support. Requires that the state board consist of the lieutenant governor, the treasurer and eleven members appointed by the governor, and subject to confirmation by the legislature in a joint session. Establishes the methods of appointment and terms of office for state board members.

# Creates a state superintendent of public instruction, who shall be the secretary and chief administrative officer of the state board.

### **North Dakota**

# Requires the legislature to make provision for the establishment and maintenance of a system of public schools, which shall be open to all the state's children.

# Requires the legislature to provide for a uniform system of free public schools throughout the state.

# Prohibits any money raised for the support of public schools to be appropriated to or used for the support of any sectarian school.

# Requires that public schools be free from sectarian control.

# Provides that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, be forever guaranteed in North Dakota.

### **Ohio**

# Requires the legislature to make such provision, by taxation or otherwise, as will secure a thorough and efficient system of common schools throughout the state.

# Requires that provisions be made by law for the organization, administration and control of the public school system of the state supported by public funds.

# Forbids any religious or other sect from having any exclusive right to, or control of, any part of the school funds of the state.

# Provides that no person be compelled to attend, erect or support any place of worship, or maintain any form of worship, against his consent; that no preference be given, by law, to any religious society; that no interference with the rights of conscience be permitted; and that it is the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

# Creates a state board of education. Charges the legislature with establishing the method of selection and terms of office for state board members. Charges the state board with appointing a state superintendent of public instruction.

# Authorizes each school district to determine by referendum vote the number of members and the organization of the district board of education.

### **Oklahoma**

- # Requires the legislature to establish and maintain a system of free public schools, which shall be open to all the children of the state and free from sectarian control; said schools shall always be conducted in English, although the teaching of other languages in said public schools is not precluded.
- # Provides that no public money or property ever be appropriated, applied, donated or used, directly or indirectly, for the use, benefit or support of any sect, church, denomination, or system of religion, or for the use, benefit or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.
- # Vests the supervision of instruction in the public schools in a state board of education. Requires the state superintendent of public instruction to be the president of the state board.
- # Requires the legislature to provide for a system of textbooks for the common schools. Requires the state to furnish such textbooks free of cost for use by all the pupils of the common schools. Requires the legislature to authorize the governor to appoint a committee composed of active educators of the state, whose duty it shall be to prepare official multiple textbook lists from which textbooks for use in common schools shall be selected by committees composed of active educators in the local school districts in a manner to be designated by the legislature.
- # Requires the legislature to provide for the teaching of the elements of agriculture, horticulture, stock feeding and domestic science in the common schools.
- # Requires that the legislature provide for the compulsory attendance at some public or other school of all the children between the ages of 8 and 16 years for at least three months in each year.

### **Oregon**

- # Requires the legislature to provide for the establishment of a uniform and general system of common schools.
- # Provides that no law in any case whatever control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience, that no money be drawn from the treasury for the benefit of any religious, or theological institution; and that no money be appropriated for the payment of any religious services in either house of the legislature.
- # Charges the legislature with providing for the election of a state superintendent of public instruction.

### **Pennsylvania**

- # Requires the legislature to provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the commonwealth.
- # Forbids any money raised for the support of the public schools to be appropriated to or used for the support of any sectarian school.
- # Provides that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; and that no preference ever be given by law to any religious establishments or modes of worship.

### **Rhode Island**

- # Requires the legislature to promote public schools and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education.
- # Forbids the legislature from diverting the school fund from the support of the public schools.
- # Provides that no person be compelled to frequent or to support any religious worship, place or ministry whatever, except in fulfillment of such person's voluntary contract.

### **South Carolina**

- # Requires the legislature to provide for the maintenance and support of a system of free public schools open to all children.
- # Forbids any money to be paid from public funds for the direct benefit of any religious or other private educational institution.
- # Provides that the legislature make no law respecting an establishment of religion or prohibiting the free exercise thereof.
- # Creates a state board of education, all of whose members are elected (except a member appointed by the governor).

# Creates a state superintendent of education, who shall be the chief administrative officer of the public education system.

### **South Dakota**

# Requires the legislature to establish and maintain a general and uniform system of public schools, equally open to all and wherein tuition shall be without charge.

# Disallows any appropriation of lands, money or other property or credits to aid any sectarian school by the state. Forbids the state to accept any grant, conveyance, gift or bequest of lands, money or other property to be used for sectarian purposes.

# Requires that public schools be free from sectarian instruction.

# Allows the legislature to authorize the loaning of nonsectarian textbooks to all children of school age.

# Provides that no person be compelled to attend or support any ministry or place of worship against his consent; that no preference be given by law to any religious establishment or mode of worship; and that no money or property of the state be given or appropriated for the benefit of any sectarian or religious society or institution.

### **Tennessee**

# Requires the legislature to provide for the maintenance, support and eligibility standards of a system of free public schools.

# Provides that no man be compelled to attend, erect or support any place of worship, or to maintain any minister against his consent; and that no preference ever be given, by law, to any religious establishment or mode of worship.

### **Texas**

# Requires the legislature to establish and make suitable provision for the support and maintenance of an efficient system of free public schools.

# Prohibits any part of the public school fund to ever be appropriated to or used for the support of any sectarian school.

# Provides that no man be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no preference ever be given by law to any religious society or mode of worship; that it is the duty of the legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship; that no money be appropriated, or drawn from the treasury for the benefit of any sect or religious society, theological or religious seminary; and that no property belonging to the state be appropriated for any such purposes.

# Provides for the support of public schools for not less than six months in each year.

# Requires the legislature to provide for a state board of education and establish the terms of office for each board member.

# Requires the legislature to set the terms of all offices of the public school system not to exceed six years.

# Charges the state board with providing free textbooks for children attending the public schools.

### **Utah**

# Requires the legislature to provide for the establishment and maintenance of a public education system, which shall include all public elementary and secondary schools, be open to all children of the state and free, except that the legislature may authorize the imposition of fees in secondary schools.

# Prohibits any appropriations for the direct support of any school or educational institution controlled by any religious organization.

# Requires that the public education system be free of sectarian control.

# Provides that the state make no law respecting an establishment of religion or prohibiting the free exercise thereof; that there be no union of church and state; that no church dominate the state or interfere with its functions; and that no public money or property be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.

# Vests the general control and supervision of public education in an elected state board of education. Charges the state board with appointing a state superintendent of public instruction.

## **Vermont**

- # Provides that a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth.
- # Provides that no person ought to, or of right be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of conscience, and that no authority can, or ought to be vested in, or assumed by, any power whatever, that in any case interferes with, or in any manner control the rights of conscience, in the free exercise of religious worship.

## **Virginia**

- # Requires the legislature to provide for a system of free public elementary and secondary schools for all children of school age and to seek to ensure that an educational program of high quality is established and maintained.
- # Allows the legislature to provide for the establishment, maintenance and operation of any educational institutions which are desirable for the intellectual, cultural and occupational development of the people.
- # Prohibits any appropriation of public funds to any school or institution of learning not owned or exclusively controlled by the state or some political subdivision. Allows the state to appropriate funds for educational purposes in public and nonsectarian private schools and institutions of learning.
- # Provides that no man be compelled to frequent or support any religious worship, place or ministry whatsoever; that the legislature not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within the commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.
- # Vests the general supervision of the public school system in a state board of education, to be composed of nine members appointed by the governor and subject to confirmation by the legislature. Establishes the terms of office for state board members. Prescribes the powers and duties of the state board.
- # Creates a state superintendent of public instruction, who shall be an experienced educator, appointed by the governor and subject to confirmation by the legislature. Allows the legislature to alter the method of selection and term of office for the state superintendent of public instruction.
- # Vests the supervision of schools in each school division in a school board.
- # Requires the state board to certify to the school board of each division a list of qualified persons for the office of division superintendent of schools, one of whom shall be selected to fill the post by the division school board. Charges the state board with appointing a division superintendent if a division school board fails to select a division superintendent within the time prescribed by law.
- # Requires the state board to periodically determine and prescribe standards of quality for school divisions, subject to revision only by the legislature.
- # Authorizes the state board to approve textbooks and instructional aids and materials for use in courses in the public schools.
- # Requires the legislature to ensure that textbooks are provided at no cost to each child attending public school whose parent or guardian is financially unable to furnish them.
- # Charges the legislature with providing for the compulsory elementary and secondary education of every eligible child of appropriate age.

## **Washington**

- # Requires the legislature to provide for a general and uniform system of public schools.
- # Requires that the entire revenue derived from the common school fund and the state tax for common schools be exclusively applied to the support of the common schools.
- # Requires that all schools maintained or supported wholly or in part by public funds be forever free from sectarian control or influence.
- # Provides that no public money or property be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment.

## **West Virginia**

- # Requires the legislature to provide for a thorough and efficient system of free schools.
- # Provides that no man be compelled to frequent or support any religious worship, place or ministry whatsoever; that the legislature not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within the state, to levy on themselves, or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry, but it shall be left free for every person to select his religious instructor, and to make for his support, such private contracts as he shall please.
- # Requires public schools to provide a designated brief time at the beginning of each school day for any student desiring to exercise their right to personal and private contemplation, meditation or prayer; that no student of a public school be denied the right to personal and private contemplation, meditation or prayer; and that no student be required or encouraged to engage in any given contemplation, meditation or prayer as a part of the school curriculum.
- # Vests the general supervision of the free schools in the state board of education, to be composed of nine members appointed by the governor by and with the advice and consent of the senate. Forbids any more than five members of the state board from belonging to the same political party. Establishes the terms of office and the grounds for removal from office for state board members. Charges the state board with selecting the state superintendent of free schools, who shall be the chief school officer of the state.
- # Allows the legislature to provide for county superintendents and such other officers as may be necessary.

## **Wisconsin**

- # Requires the legislature to provide for the establishment of district schools, which shall be as nearly uniform as practicable and free and without charge for tuition for all children between the ages of 4 and 20 years.
- # Forbids any money to be drawn from the treasury for the benefit of religious societies or religious or theological seminaries.
- # Prohibits any sectarian instruction in district schools. Allows the legislature, for the purpose of religious instruction outside the district schools, to authorize the release of students during regular school hours.
- # Allows the legislature to provide for the transportation of children to and from any parochial or private school or institution of learning.
- # Allows the legislature to authorize, by law, the use of public school buildings by civic, religious or charitable organizations during nonschool hours upon payment by the organization to the school district of reasonable compensation for such use.
- # Provides that no man be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; that no control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; and that no money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.
- # Vests the supervision of public instruction in an elected state superintendent of public instruction. Prescribes the method of election and the term of office for the state superintendent of public instruction.

## **Wyoming**

- # Provides that the right of the citizens to opportunities for education have practical recognition, and requires the legislature to suitably encourage means and agencies calculated to advance the sciences and liberal arts.
- # Requires the legislature to provide for the establishment and maintenance of a complete and uniform system of public instruction.
- # Requires the legislature to create and maintain a thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state between the ages of 6 and 21 years, and free of charge.
- # Forbids any portion of any public school fund to ever be used to support or assist any private school or any school, academy, seminary, college or other institution of learning controlled by any church or sectarian organization or religious denomination.
- # Requires that public schools be free from sectarian instruction.



- # Provides that the free exercise and enjoyment of religious profession and worship without discrimination or preference be forever guaranteed in the state, and that no money of the state ever be given or appropriated to any sectarian or religious society or institution.
- # Provides for the support of public schools for not less than three months in each year.
- # Entrusts the general supervision of the public schools to the state superintendent of public instruction.
- # Charges the legislature with requiring every child of sufficient physical and mental ability to attend a public school during the period between 6 and 18 years for a time equivalent to three years, unless educated by other means.
- # Forbids the legislature and the state superintendent of public instruction from prescribing textbooks to be used in the public schools.

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