

Adequacy of educational legislation: Laws, Regulations, Decisions

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 noneducators 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).

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 tuitions.. 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).

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.

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