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Constitutional and Statutory Provisions for Public Education
in North Carolina

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Division of Educational Authority

- The North Carolina Constitution establishes the General Assembly's ultimate authority and responsibility for the public education system and its authority over the SBE. Article IX, § 2(1) states:
 - "The General Assembly shall 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 where in equal opportunities shall be provided for all students."
 - N.C. Const. art. IX, § 2 (emphasis added).

Historical Background: Evolution of Educational Authority

- 1868 Constitution created a State Board to supervise and administer the State's free public school system:
 - “The Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina, and shall have full power to legislate and make all needful rules and regulations in relation to free public schools and the educational fund of the State; but all acts, rules and regulations of said Board may be altered, amended or repealed by the General Assembly, and when so altered, amended or repealed, they shall not be re-enacted by the Board.”

Historical Background: Evolution of Educational Authority

- In 1942 voters adopted a constitutional amendment changing the State Board's power:
 - The State Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina and the State Board of Education as heretofore constituted. The State Board of Education shall have power to divide the State into a convenient number of school districts; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of the textbooks to be used in the public schools; to apportion and equalize the public school funds over the State; and generally to supervise and administer the free public school system of the State and make all needful rules and regulations in relation thereto. All the powers enumerated in this section shall be exercised in conformity with this Constitution and **subject to such laws as may be enacted from time to time by the General Assembly.**

Historical Background: Evolution of Educational Authority

- Constitution of 1971, which remains unchanged:
 - “The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.”

Historical Background: Key Takeaways

- The General Assembly has always been authorized to check the State Board's power to some degree.
- The 1868 constitution provided that acts, rules, and regulations enacted by the Board could be "altered, amended or repealed" by the General Assembly. N.C. Const. of 1868, art. IX, § 9.
- Each change to the constitution thereafter stated in more general terms that the Board's authority over the State's public education system is "subject to laws enacted by the General Assembly."
- This review of the provisions of the North Carolina Constitution and its changes to these dictates clearly shows that the General Assembly currently has the power to enact laws with respect to education and to govern the State Board's rules and regulations.

Division of Educational Authority: State Board of Education

- The Constitution requires the State Board of Education
 - to "supervise and administer the free public school system and the educational funds provided for its support" and
 - to "make all needful rules and regulations in relation thereto, **subject to laws enacted by the General Assembly.**"
 - N.C. Const. art. IX, § 5 (emphasis added).
 - While the SBE has some constitutional authority based on Section 5, the latter clause, "subject to laws enacted by the General Assembly[,]" places the legislature in ultimate authority over the SBE.

Division of Educational Authority: State Board of Education, G.S. § 115C-12

- The general supervision and administration of the free public school system shall be vested in the State Board of Education.
- The State Board “shall establish all needed rules and regulations for the system of free public schools, subject to laws enacted by the General Assembly.”

Division of Educational Authority: State Board of Education, G.S. § 115C-12

- The financial powers of the Board are set forth in Article 30 of this Chapter.
- Submit a Budget Request to the Director of the Budget
- Apportionment of Funds
- Power to Demand Refund for Inaccurate Apportionment Due to False Attendance Records.
- Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County.
- Power to Make Provisions for Sick Leave and for Substitute Teachers. –
- Miscellaneous Powers and Duties.

Division of Educational Authority: Superintendent

- Article III, § 7 provides for the election of a State Superintendent of Public Instruction by the qualified voters of the State in 1972 and every four years thereafter.
- Further that the duties of that office, among others, shall be prescribed by law. Said duties are set by statute
- As secretary and chief administrative officer of the State Board of Education, the Superintendent “shall administer all needed rules and regulations adopted by the State Board of Education through the Department of Public Instruction.” N.C. Gen. Stat. § 115C-19
- Detailed duties set forth in N.C. Gen. Stat. § 115C-21

Division of Educational Authority

SPI's Administrative Duties, G.S § 115C-21

- To organize and establish a Department of Public Instruction (DPI);
- To keep the public informed as to the problems and needs of the public schools;
- To report biennially to the Governor 30 days prior to each regular session of the General Assembly;
- To have printed and distributed educational bulletins;
- To have under her direction and control, all matters relating to the direct supervision and administration of the public school system;
- To create and administer special funds within the Department of Public Instruction to manage funds received as grants from nongovernmental sources;
- To administer, through DPI, all needed rules and regulations established by the State Board; and
- To have under her direction and control all matters relating to the provision of staff services, except certain personnel, and support of the State Board of Education, including implementation of federal programs on behalf of the State Board.

Division of Educational Authority: SPI as Secretary of State Board, G.S. § 115C-21

- To administer funds appropriated for the operations of the State Board and for aid to local school administrative units.
- To keep the Board informed regarding developments in the field of public education.
- To make recommendations to the Board with regard to the problems and needs of education in North Carolina.
- To make available to the public schools a continuous program of comprehensive supervisory services.
- To collect and organize information regarding the public schools, on the basis of which he or she shall furnish the Board such tabulations and reports as may be required by the Board.
- To communicate to public school administrators information about rules and regulations adopted by the Board.
- To have custody of the official seal of the Board and to attest all deeds, leases, or written contracts executed in the name of the Board.
- To attend all meetings of the Board and to keep the minutes.
- To perform such other duties as may be necessary and appropriate.

Atkinson v. State
09CVS006655

- Atkinson v. State, 2009, challenge to Governor's creation of education CEO
- “The duties and responsibilities for administering and managing the North Carolina Department of Public Instruction and administering the North Carolina public school system as directed by the State Board of Education are vested in the duly elected State Superintendent of Public Instruction.”
- Wake County Superior Court, not appealed by Governor.

Rules and Regulations: Process for Rulemaking

- Administrative Procedures Act (APA) creates a framework for rulemaking
- Transparent: requires that government give the public the opportunity to learn of proposed rules and comment on them.
- Diffuse: the APA requires that the power of government be diffused among more than one government body before a proposed rule becomes a rule

APA Requirements

- The General Assembly has exercised its constitutional authority over the SBE and DPI by further codifying the Board's powers and subjecting it to the Administrative Procedure Act-including, the APA's generally applicable regulations for adoption of agency rules. N.C. Gen. Stat. § 115C-12; N.C. Gen. Stat. § 115C-2; N.C. Gen. Stat. § 150B-1, et seq.
- An agency is defined by the Act as "an agency or an officer in the executive branch of the government of this State and includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency." N.C. Gen. Stat. § 150B-2(1a).
- Article 2A of Chapter 150B governs the adoption of agency rules and states: " A rule is **not valid** unless it is adopted in substantial compliance with this Article." N.C. Gen. Stat. § 150B-18 (emphasis added).

APA Requirements

- The APA "applies to every agency" unless specifically exempted. N.C. Gen. Stat. § 150B-1(c)
- Rather than exempt the SBE, the General Assembly expressly provides in Chapter 150C that the SBE is subject to the Act. The statute states: "All action of agencies taken pursuant to this Chapter [Elementary and Secondary Education], as agency is defined in G.S. 150B-2, is subject to the requirements of the Administrative Procedure Act[.]" N.C. Gen. Stat. § 115C-2.
- In one area, that of establishing procedures relating to standardized test scores and other personnel evaluation metrics, the SBE is made exempt from the APA. N.C. Gen. Stat. § 115C-270.15(b).
- However, in other areas, SBE remains subject to the rule making provisions of the APA.

Rules or Policies?

- State Board and/or DPI cannot circumvent the APA by denominating its rules as “policies”
- APA defines as rule as:
 - "any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule."
- Article 2A of Chapter 150B governs the adoption of agency rules and states: " A rule is **not valid** unless it is adopted in substantial compliance with this Article." N.C. Gen. Stat. § 150B-18 (emphasis added).

Rules or Policies?

- While not defined under the APA, a policy is considered a rule, regardless of label, if it meets the statutory definition.
- N.C. Gen. Stat. § 150B-18 warns:
 - "An agency **shall not seek to implement or enforce against any person a policy, guideline, or other interpretive statement** that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other interpretive statement has not been adopted as a rule in accordance with this Article." (emphasis added)
- Article 2A of Chapter 150B governs the adoption of agency rules and states: " A rule is **not valid** unless it is adopted in substantial compliance with this Article."

A Few Notable Cases
Regarding Education Duties,
Rights, and Responsibilities

*Beaufort County Board of education v. Beaufort
County Board of Commissioners*

363 N.C. 500 (2009)

- Art. IX, sec. 6 creates a state school fund
- Art. IX, sec. 7 creates county school fund
- While a “general and uniform system of free public schools” requires a minimum uniform funding, the existence of distinct state and county school funds creates an environment in which funding inequality is not only possible but probable.

Leandro v. State

346 NC 336 (1997)

- Funding and educational opportunities
- “Both plaintiffs and plaintiff-intervenors (hereinafter ‘plaintiff-parties’ when referred to collectively) allege in their complaints in the case resulting in this appeal that they have a right to adequate educational opportunities which is being denied them by defendants under the current school funding system.”
- “Plaintiff-parties also allege that the North Carolina Constitution not only creates a fundamental right to an education, but it also guarantees that every child, no matter where he or she resides, is entitled to equal educational opportunities. Plaintiff-parties allege that defendants have denied them this right.”

What is the “right”?

- “We conclude that Article I, Section 15 and Article IX, section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools”
346 NC at 347

BUT ...

- “Although we have concluded that the North Carolina Constitution requires that access to a sound basic education be provided equally in every school district, we are convinced that the equal opportunities clause of Article IX, Section 2(1) does not require substantially equal funding or educational advantages in all school districts.”
- “We have considered the language and history underlying this and other constitutional provisions concerned with education as well as former opinions by this Court. As a result, we conclude that provisions of the current state system for funding schools which require or allow counties to help finance their school systems and result in unequal funding among the school districts of the state do not violate constitutional principles.” 346 NC at 349

A little irony...

- “We believe that even greater problems of protracted litigation resulting in unworkable remedies would occur if we were to recognize the purported right to equal educational opportunities in every one of the state's districts.” 346 NC at 351

Leandro's Essence

- Every child has the right to the opportunity to receive a sound basic education
- Disparities in funding are not unconstitutional
- Constitution allows local government to supplement:
 - The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program. Article IX, Section 2(2)

Hoke County Board of Education v State

358 NC 605 (2004)

- The State appealed the trial court determination that the State had failed in its constitutional duty to provide certain students with the opportunity to attain a sound basic education.
- The State also appealed the trial court's order that directed the State to remedy constitutional deficiencies by:
 - 1) assuming the responsibility for, and correct, those educational methods and practices that contribute to the failure to provide students with a constitutionally-conforming education; and
 - (2) expanding pre-kindergarten educational programs so that they reach and serve all qualifying "at-risk" students.

Hoke County

- Supreme Court agreed with the trial court that the State had failed to provide a constitutionally conforming education.
- The Court looked at two types of evidence:
 - Outputs (test scores, graduation rates, employment potential, post-secondary education success)
 - Inputs (“deficiencies pertaining to the educational offerings” and “deficiencies pertaining to the educational administration” of the schools)

Richmond Cty. Bd. of Educ. v. Cowell
254 N.C. App. 422 (2017)

- Plaintiffs challenged fines being used for jail in violation of Article IX, sec. 7
- Trial court ordered State officials to pay money judgment
- “Under the Separation of Powers Clause in our State constitution, no court has the power to order the legislature to appropriate funds or to order the executive branch to pay out money that has not been appropriated.”

Other Constitutional Provisions

Appropriations Clause

Article V, Section 7

- **Sec. 7. Drawing public money.**
- (1) State treasury. No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.
- (2) Local treasury. No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Taxing Power

Article V, Section 2(1)

- **Sec. 2. State and local taxation.**

- (1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.
- *Deloatch v. Beamon*, 252 N.C. 754 (1960)(power to levy **taxes** vests exclusively in the legislative branch of the government);



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