

When disputes arise in school districts, who decides?

Usually it's the commissioner of education, but exceptions abound

By the New York State
Association of School Attorneys

Given the breath and complexity of issues faced by boards and administrators on a daily basis, it is inevitable that disputes will arise. Who decides such matters? In most cases, it's the state commissioner of education. This article will give an overview of the commissioner's quasi-judicial role and describe the role of other entities that can resolve disputes involving school districts.

'Decisions' by commissioner similar to a judge's rulings

Different states have different ways of settling disputes involving school districts. New York State is unique in giving the commissioner of education a broad decision-making authority on a wide range of topics including elections (an area where the commissioner has exclusive jurisdiction). In a given month, the commissioner might decide:

- Whether a school board acted properly in conducting a bond referendum.
- Whether a school district properly made an appointment to a new administrative position.
- Whether a student is homeless and entitled to attend the district's schools tuition-free.

Commissioner's decisions can involve issues concerning students (such as discipline and grading), staff (such as tenure and seniority), or district decisions on countless aspects of programs, facilities, transportation and finance.

The commissioner's authority derives from section 310 of the state Education Law, which permits any person aggrieved by a decision or action of a school board, individual board member, superintendent or other district official, concerning any matter under the Education Law or other law pertaining to the public schools, to appeal to the commissioner of education. Board members will often hear their school attorney refer to an appeal filed under this section of the law as a "section 310 appeal."

Through decisions issued in section 310 appeals, the commissioner may order a school board to reinstate a teacher, overturn a student discipline decision, or void the outcome of a budget vote. In the event that a board member or board officer willfully disobeys a decision of the



commissioner, the commissioner has the authority under section 306 of the Education Law to remove that school board member from office or strip the officer (such as board president) of his or her leadership role.

This approach serves several purposes. First, it avoids overburdening the courts and allows the parties to avoid more costly and time-consuming forms of dispute resolution, such as court litigation. Second, it taps the expertise of a state agency that interprets and enforces both the state's education law and a body of administrative rules called Regulations of the Commissioner of Educa-

tion (which are passed by the Board of Regents). Third, it creates a body of publicly available decisions that have precedential value and collectively become what's called "case law" – interpretations of statutes and regulations as applied to a specific set of circumstances.

While decisions of the commissioner can be reviewed by state Supreme Court, relatively few are. Although court reversals do occur, they are rare due to the legal standard of review and the deference that courts usually give to the commissioner.

Commissioner's decisions provide important guidance to school boards, district administrators and school attorneys about the commissioner's expectations for the future. They make up the bulk of references to NYSSBA's reference book, *School Law*, which is updated every two years.

Trends in commissioner's decisions during 2015

School attorneys pore over commissioner's decisions as they are issued in search of insights that will inform their advice to their client districts and avoid legal challenges. This past year, the commissioner issued 163 decisions under section 310, some of which reminded districts that they should:

- Include the basis for a district's determination that a child is not a district resident in the district's final determination letter in order to provide sufficient information to permit a meaningful challenge.
- Follow the procedural requirements prescribed in regulations for notice, the opportunity for an informal conference and the opportunity to question complaining witnesses before suspending a student, or risk the voiding of the suspension on appeal.
- Respond in a timely and meaningful manner to parties who make allegations of legal violations by the district.

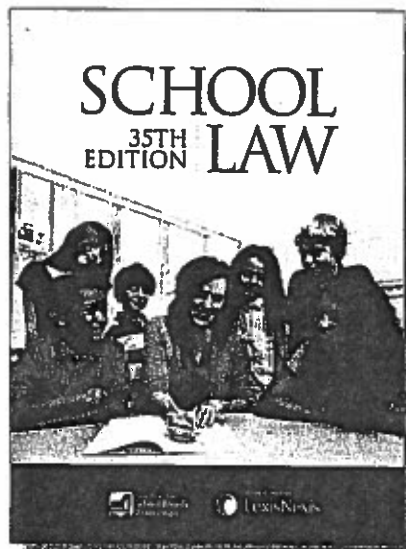
Also notable in 2015 were decisions on whether districts properly handled student "opt-outs" during the administration of state 3-8 assessments. In multiple decisions, the commissioner stated that districts are not required to provide a child who has refused the assessment with an alternate location or to allow such child to read other materials while other children are taking their assessments.

Commissioner generally does not rule on certain topics

Although the authority of the commissioner of education is broad, the commissioner will not decide certain types of disputes which are left to the courts or other agencies to determine.

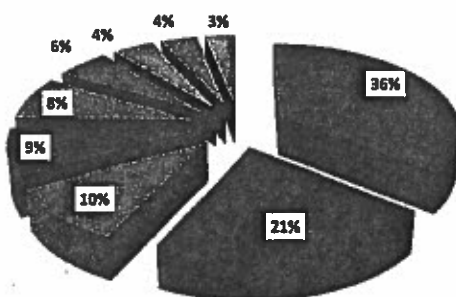
For instance, the commissioner has no jurisdiction to decide disputes involving the New York State Open Meetings Law (OML) or Freedom of Information Law (FOIL) as such matters are for the courts to resolve. Advisory opinions on OML and FOIL are issued by the New York State Committee on Open Government, supervised by attorney Robert Freeman.

The commissioner also lacks jurisdiction over alleged violations of the Family Educational Rights and Privacy Act (FERPA), which are handled by the U.S. secretary of education, or alleged violations of federal or state civil rights laws, which are adjudicated by state or federal courts (with the exception of complaints involving the New York State Dignity for all Students Act or "DASA").



Decisions of the Commissioner of Education make up the bulk of references in NYSSBA's *School Law* book. Reversals by the courts are rare.

Commissioner's Decisions - 2015



- NYC Charter School Co-Location/School Utilization*
- Student Residency (including homeless appeals)
- School District Election
- Misc. District Matters (e.g. facilities, contracts, programs)
- Misc. Student Matters (e.g. grading, immunization, athletics)
- Tenure/Seniority/Personnel Matters
- Transportation
- Student Discipline
- Application for Removal of Board Member or Officer

* Legislation enacted in 2014 permitted expedited appeals to the commissioner on issues related to charter schools in New York City

DISPUTES, from page 16

Furthermore, the commissioner will not decide claims for money damages or claims that raise constitutional issues of first impression (that is, questions that have not been considered by any level of court and require an interpretation of either the state Constitution or the U.S. Constitution). Nor will the commissioner decide appeals from hearings or determinations to discipline instructional or non-instructional staff. Instead, these types of appeals are resolved through the courts, contractual arbitration procedures, or administrative agency review. Lastly, appeals relating to the identification, evaluation, program or placement of students with disabilities are decided by the New York State Office of State Review, not the commissioner of education.

In addition, individuals can make complaints about alleged violations of law to a variety of governmental

entities, such as the state attorney general, the state comptroller, the U.S. Department of Justice and the Office for Civil Rights (OCR) in the U.S. Department of Education. OCR investigates complaints of discrimination that can be filed by anyone who believes that an education institution that receives federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. OCR also issues advisory guidance to school districts on a variety of federal laws, including Title IX and the Individuals with Disabilities Education Act (IDEA).

PERB handles almost all collective bargaining issues

Disputes involving collective bargaining issues in public school districts are handled by the Public Employment Relations Board (PERB). PERB is a state agency

that has been delegated the authority to address labor relations matters in public school districts under the Public Employees' Fair Employment Act, commonly known as the Taylor Law. PERB's responsibilities under the Taylor Law include resolving representation disputes, adjudicating improper practice charges over the duty to bargain and providing impasse resolution services in the context of negotiations.

Disputes over the interpretation of the terms and conditions of existing collective bargaining agreements usually are governed by the external grievance or arbitration procedures laid out in the contract.

However, the new state receivership law has designated the commissioner as the party responsible for settling disputes involving collective bargaining issues, but only for schools in receivership. The commissioner has already exercised this new authority (with regard to the Buffalo school district) on two separate occasions.

Receivership is just the most recent example of a new law bestowing an important decision-making power on the commissioner. In 2010 and 2014, the Legislature delegated to the commissioner the authority to resolve questions with respect to the co-location of charter schools in New York City on an expedited basis.

It remains to be seen how the commissioner's quasi-judicial role will continue to evolve. But it appears a safe bet that the commissioner's decision-making power will not diminish.

Timely and thoughtful responses needed when commissioner mulls 'stay' requests

"Stay" is a 1970s rock anthem by Jackson Browne. It's also the term used for an order issued by the state commissioner of education to grant relief between the time an appeal is brought and a final decision issued. Stay requests must be taken seriously as school districts can be prevented from taking action during a stay.

Suppose parents refuse to have their child immunized. They cite a religious objection, but the district conducts an inquiry and determines the parents lack a sincere religious belief that would exempt the child

from immunization. The family might appeal to the commissioner of education and immediately request a stay to temporarily block the district from enforcing its decision that the child be immunized before attending classes.

When a stay request is made, the school district and its school attorney only have three business days to respond. Responding adequately may require obtaining affidavits and providing records of correspondence or other exhibits.


A review of commissioner's decisions issued during 2015

indicates that stay requests have become commonplace, with stays being requested in two-thirds of the decided cases involving school districts outside of New York City. Consequently, the school attorney will often work with the district to file two sets of papers in an appeal — an immediate response to a stay request by the other party, followed by an additional response to the petition.

— Erin M. O'Grady-Parent, Guercio & Guercio



Members of the New York State Association of School Attorneys represent school boards and school districts. This article was written by Erin M. O'Grady-Parent of Guercio & Guercio, LLP. Prior to joining the firm as a partner in May 2011, O'Grady-Parent served as counsel and deputy commissioner for legal affairs at the State Education Department.



SUPERINTENDENT

Hempstead Public Schools

The Hempstead Union Free School District is seeking a strong educational leader for the position of Superintendent of Schools. Hempstead is located in central Nassau County, Long Island, New York and serves approximately 7,700 pupils in grades pre-K through 12.

Compensation will depend upon on the qualifications and experience of the selected candidate.


Mail or electronically submit a cover letter, resume, copies of all certificates and at least 4 references by March 1, 2016 to:
 Patricia Wright, District Clerk
 185 Peninsula Boulevard
 Hempstead, New York 11550
 Telephone: (516) 434 4002 • pwright@hempsteadschools.org

• SUPERINTENDENT OF SCHOOLS •

Onteora Central School District
Ulster County, New York

- 1,326 pupils, K-12
- NYS SDA or SDL Certification Required
- Regionally Competitive Salary
- Application Deadline – February 29, 2016

SEND LETTER OF INTEREST TO:
 Dr. Charles Khoury, District Superintendent
 Ulster County BOCES
 175 Route 32 North
 New Paltz, NY 12561



New York State
School Boards
Association

Connect. Engage. Act.


Prepare to advocate on behalf of your students.

2016

The Capital Conference

FEBRUARY 28-29, 2016 • HILTON ALBANY

Register **TODAY** at www.nyssba.org/events



Complimentary for members.