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THE ROLE OF THE STATE GOVERNMENT IN PUBLIC EDUCATION IN THE UNITED STATES

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The United States Constitution

The Tenth Amendment to the United States Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Since education is not mentioned in the Constitution, it is one of those powers reserved to the states. Of course, the United States Supreme Court can declare that something not mentioned in the Constitution is so closely related to something that is mentioned in the Constitution that the unmentioned power is a fundamental interest, which rises to constitutional protection. So far, the Supreme Court has not declared that education is a fundamental interest. Thus, states have plenary, or absolute, power in the area of education. The states have plenary power to enact statutes concerning education so long as these statutes do not violate the provisions of the United States Constitution.

The State Constitution

In most states, the issue of public education is considered in the constitution of the state. The Pennsylvania State Constitution addresses public education in Article III, Section 14 which states:

Section 14. Public School System

The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.

Therefore, in Pennsylvania the Constitution gives plenary, or absolute, power to the General Assembly, which is the legislative branch of government. It does not specify how the system of public education is to be maintained and supported.

The State Legislature

The legislative branch of state government can exercise those powers granted to it by the state constitution through the passage of laws and the creation of other bodies. If the legislature has plenary power over public education, it has the power to control education in the state through the enactment of statutes. It also has the power to create other bodies and endow them with some of its power. Generally speaking, these bodies are creatures of the legislature and subject to its ultimate authority. There are two kinds of power that the legislature gives to bodies that it creates. One type of power is to enact rules and regulations that are binding on the jurisdiction of the created agency. This is referred to as rule-making or policy-making power. The other kind of power is more limited; this is the power to enforce the laws passed by the legislature or the regulations passed by some other body. This power can also involve the writing of regulations within the directions specified by some other body. The Legal Information Institute at Cornell University Law School has internet links to the [education statutes of the all fifty states](#) and the District of Columbia.

In Pennsylvania, the statutes of the General Assembly concerning public education are collected in the [The Public School Code of 1949 and other statutes](#). A code is a collection of laws on a common topic. The General Assembly has passed many laws since 1949, but the last time the entire Public School Code was considered by the legislature in its entirety was in 1949. When a new statute is passed, it is placed in the Code at the appropriate location. The Code is arranged in twenty-seven articles, and laws are placed in each article in an organized fashion in terms of a statutory citation which gives the Article and Section (§) of the Code where a statute is placed. For example, Sect. 1-101 (**§ 1-101**) refers to Section 101 of Article I of the Code, which is entitled "Short title and effective date." By using a statutory citation such as Sect. 1-101, a school law can be located quite easily in the Code. The citations to laws in the Public School Code are in the form of citations to *Purdon's Pennsylvania Statutes Annotated* (PS) because these are still unconsolidated statutes (see below). The statutory citation for Sect. 1-101 of the Public School Code is 24 PS 1-101 (24 PS § 1-101), which refers to Section 1-101 of volume 24 of *Purdon's Pennsylvania Statutes Annotated*, which is Section 101 of Article I of the Public School Code of 1949. A brief outline of the organization of the Pennsylvania Public School Code is presented below.

PUBLIC SCHOOL CODE OF 1949. [§ 1-101 -- § 27-2702]

ARTICLE I. Preliminary Provisions

ARTICLE II. School Districts

ARTICLE III. School Directors

ARTICLE IV. Organization Meetings And Officers Of Boards Of School Directors

ARTICLE V. Duties And Powers Of Boards Of School Directors

ARTICLE VI. School Finances

ARTICLE VII. Grounds And Buildings

ARTICLE VIII. Books, Furniture And Supplies

ARTICLE IX. School Directors' Associations And County Boards Of School Directors [Repealed.]
ARTICLE IX-A. Intermediate Units
ARTICLE X. District and Assistant District Superintendents.
ARTICLE XI. Professional Employees
ARTICLE XI-A. Collective Bargaining
ARTICLE XII. Certification Of Teachers
ARTICLE XIII. Pupils And Attendance
ARTICLE XIII-A. Safe Schools
ARTICLE XIV. School Health Services
ARTICLE XV. Terms And Courses Of Study
ARTICLE XV-A. Project Link To Learn
ARTICLE XVI. High Schools
ARTICLE XVII. Joint Schools And Departments
ARTICLE XVII-A. Charter Schools
ARTICLE XVIII. Vocational Education
ARTICLE XIX. Extension Education And Special Schools And Classes
ARTICLE XIX-A. Community Colleges
ARTICLE XIX-B. Thaddeus Stevens State School Of Technology
ARTICLE XIX-C. Disruptive Student Programs
ARTICLE XIX-D. Community Education Councils
ARTICLE XX. State Colleges [Repealed.]
ARTICLE XX-A. The State System Of Higher Education
ARTICLE XXI. School Districts Of The First Class
ARTICLE XXII. Teachers' And Employees' Retirement Funds
ARTICLE XXIII. Public School Libraries[Repealed.]
ARTICLE XXIV. Auditing Of School Finances
ARTICLE XXV. Reimbursements By Commonwealth And Between School Districts
ARTICLE XXVI. State School Fund
ARTICLE XXVI-B. The State Board Of Education
ARTICLE XXVI-C to XXVI-F. [Expired]
ARTICLE XXVI-G. Graduate Opportunity Fund
ARTICLE XXVI-H Post-Secondary Degrees
ARTICLE XXVII. REPEALS

Because the entire Public School Code of 1949 has just been added to, there are many laws in it that are no longer applicable today, such as Section 7-740 concerning "outhouses" and the requirement that they be disinfected with "fresh-dry-slacked lime". Also, conflicting terminology is used in the code. For example, Section 11-1131 concerns "Appeals to the superintendent of public instruction". This office was replaced by the Secretary of Education and the Department of Public Instruction, also mentioned in the 1949 Code, was replaced by the Pennsylvania Department of Education.

Not all state laws that influence public schools are located in the Public School Code of the state. Usually, only education laws are placed in the school code. However, many other statutes affect public schools and school administrators and other personnel should be familiar with these laws and their effects. Some laws that affect public schools in Pennsylvania but are not in the Public School Code are presented in the table below.

There is a citation for each statute that can be used to locate the text of the law. Pennsylvania is in the process of consolidating its statutes in accordance with Act 230

of 1970, which created the framework for the Pennsylvania Consolidated Statutes (Pa CS). Before passage of this act, Pennsylvania statutes were codified and numbered using the Purdon's (PS) number, which contains a citation to *Purdon's Pennsylvania Statutes Annotated*. *Purdon's* is published by West Publishing Company. Some of the citations below are to Pennsylvania Consolidated Statutes (e.g. 18 Pa CS 2702) and some are to *Purdon's Pennsylvania Statutes Annotated* (e.g. 35 PS 7521). The text of the statute is located in the volume of place where it is codified, beginning at the section specified. For example, 18 Pa CS 2702 is located in Title 18 CRIMES AND OFFENSES of Pennsylvania Consolidated Statutes in Chapter 27, beginning at section 2702. If a public law number (PL) is given for the statute, this can also be used to locate the text of the law. For example Act 206 of 1990 (23 Pa CS 6301) is PL 1240. This law is located on page 1240 of *Laws of the General Assembly of the Commonwealth of Pennsylvania* for the year 1990 when Act 206 was passed.

The table contains information concerning eight statutes not in the School Code that are representative of the these types of statutes affecting public schools.

CITATION	TITLE	ACT	COVERS
18 Pa CS 2702	CRIMES AND OFFENSES Assault	Act 159 of 1998	Aggravated assault of school board members or school employees
23 Pa CS 6301	DOMESTIC RELATIONS Child Protective Services Law	Act 206 of 1990 (PL 1240)	Sect. 6311 <i>et seq</i> covers reporting child abuse
42 Pa CS 5945	JUDICIARY AND JUDICIAL PROCEDURE Depositions and Witnesses	Act 206 of 1990 (PL 586)	Confidential communications to school personnel
42 Pa CS 8337	JUDICIARY AND JUDICIAL PROCEDURE Immunities Generally	Act 67 of 1984 (PL 337)	Civil immunity for school officers or employees reporting student drug or alcohol abuse
42 Pa CS	JUDICIARY	Act 43	Immunity of

8541	AND JUDICIAL PROCEDURE Governmental immunity	of 1995 (PL __)	local agencies and their employees
35 PS 7521 <i>et seq</i>	HEALTH AND SAFETY Environmental Education Act	Act 24 of 1993 (PL 105)	Requirement for environmental education programs
43 PS 1101.110 <i>et seq</i>	LABOR Public Employe Relations Act	Act 195 of 1970 (PL 563)	Collective bargaining for public employees
43 PS 13211 <i>et seq</i>	LABOR Inspection of Personnel Files	Act 149 of 1990	Right of employee to inspect own personnel files

Act 159 of 1998 defines the offense of aggravated assault as the attempt to cause, or intentionally and knowingly causing bodily injury to teachers, school board members, other employees or students in elementary and secondary schools. Such aggravated assault is a felony of the second degree.

Section 6311(b) of the Child Protective Services Law states that school administrators, school teachers and school nurses are required to report suspected child abuse. Other sections of this law deal with such issues as the reporting procedure, "good faith" immunity from liability, and penalties for failing to report. Sect. 6352 concerns the serious bodily injury or sexual abuse or sexual exploitation of students by school employees. When a student comes before a school employee in the employee's professional or official capacity and that employee has reasonable cause to suspect injury, abuse or exploitation of the student by another employee, the school employee immediately must contact the administration. The school employee who makes such a report is immune from civil and criminal liability arising from the report. A school employee who willfully violates the requirement of Sect. 6352 commits a summary offense.

Act 206 of 1990 (PL 596) states that guidance counselors, school nurses, school psychologists, home and school visitors or clerical workers who work for them cannot

be compelled or allowed to share information acquired from a student in confidence or disclose such information in any legal proceeding without the consent of the student or the student's parent or guardian if the student is under eighteen years of age.

Act 67 of 1984 (PL 337) gives civil immunity to school officers or employees when reporting student drug or alcohol abuse to other school personnel, parents, legal guardians or spouses of students or when referring students for treatment or counseling or disciplinary action. This immunity is from civil damages as a result of negligent statements or acts, which were made in good faith. This immunity is also granted to school authorities responsible for discipline for negligent statements or acts undertaken in good faith when they report a student to law enforcement officers for drug or alcohol abuse. School authorities must report such abuse in accordance with school policy and the action must be based on a reasonable belief that a crime has been or will be committed.

Act 43 of 1995 gives governmental and official immunity to local agencies. School districts are local agencies. Under this act, there are eight acts by a local agency or any of its employees that may result in the imposition of liability on the local agency. These areas for which a school district may have liability are:

- (1) Vehicle liability
- (2) Care, custody or control of personal property
- (3) Real property
- (4) Trees, traffic controls and street lighting
- (5) Utility service facilities
- (6) Streets
- (7) Sidewalks
- (8) Care, custody or control of animals

This act has greatly reduced the liability faced by school districts and their employees, especially for negligence.

Act 24 of 1993, The Environmental Education Act, requires the Pennsylvania Departments of Education and Environmental Resources to develop and implement environmental education programs. It enumerates the powers and duties of both departments regarding environmental education, and it creates an Advisory Council on Environmental Education within the Department of Education.

Act 195 of 1970, The Public Employe Relations Act (PERA) deals with public sector collective bargaining in Pennsylvania. It was modeled on the National Labor

Management Relations Act (NLMRA) and contains much of the terminology and logic of NLMRA. It covers all public employees in Pennsylvania , including those employed by public schools. In 1992, the General Assembly passed Act 88 (PL 403), which is Article XI-A of the Public School Code. Act 88 modified Act 195 in important ways regarding public schools, including impasse procedures, strikes and lockouts, injunctive relief by the Secretary or Education, and the prohibition of selective strikes and the utilization of strike breakers. Since it only applied to public schools, Act 88 is included in the Public School Code.

Finally, Act 149 of 1990 gives an employee or a designated agent the right to inspect his or her personnel files during regular business hours.

Creatures Of The Legislature

The constitution of a state usually determines where power over education is vested in state government. A common vesting is in the legislative branch of state government. A general pattern followed by many states is for the legislative branch of government to create other bodies and to share its power with them. These bodies, which are created by the legislature, are creatures of the state and may be controlled by it. They have the powers with which they are endowed by their creator. In general, that which the state creates the state can also destroy.

Under Article III, Section14 of the Pennsylvania Constitution, the General Assembly is given plenary power over education. The General Assembly has created various other bodies and has endowed them with various powers. Two bodies created by the General Assembly and endowed by it with rule-making or policy-making powers are school boards of local school districts and the State Board of Education. Both these bodies are subject to the will of the General Assembly and can only make and enforce their rules and regulations within the parameters established by the legislature.

Sometimes different bodies created by the legislature at different times are given powers that overlap and there is a question concerning which body has authority over another body. This was the case in Pennsylvania concerning regulations regarding student conduct when Chapter 12 of 22 PA Code was adopted by the State Board of Education. These regulations popularly referred to as "The Student Bill of Rights" dealt with students' rights of speech, assembly, due process and the parental right to refuse to allow corporal punishment for children. These regulations were challenged in court by school districts as an infringement of the right of school districts, given in the School Code, to make rules and regulations concerning student conduct. Twenty-nine local school districts and three individual taxpayers filed a complaint that alleged that the State Board lacked authority to promulgate the regulations under the provisions of the Administrative Code, which had established the authority of the State Board of Education. In 1977, the Commonwealth Court of Pennsylvania permanently enjoined the State Board from enforcing or implementing the regulations

for lack of statutory authority. An appeal was made to the Pennsylvania Supreme Court, which ultimately decided in 1978 in *Girard School District v. Pittinger*, 481 Pa 91, that the State Board had not exceeded the rule-making power granted it by the General Assembly. Therefore, the regulations took precedence over the policies of the local school districts and the school district policies had to conform to the regulations of the State Board.

School Districts

In the history of public education, school districts and school boards were created quite early because in most states schooling was first established and controlled by the local community. The school district is the state agency with which most citizens are familiar. In Pennsylvania, there are currently 501 school districts, each with a school board. The school districts are local agencies created by the General Assembly, which have been given various powers by the legislature that are described in the Pennsylvania School Code, especially in Articles II through VII. All school boards except Philadelphia consist of nine members who are elected by persons residing in the school district. Some of the more important duties of school boards are:

Adopt rules and regulations governing teachers and students

Determine the school budget and set the millage to be levied on assessed valuation of property in the district, which provides most of the local tax monies to fund the schools

Hire teachers and contract for various services, including the maintenance and construction of buildings

Choose textbooks and establish the curriculum

Serve as the local agency in the first level of adjudication for teachers and students in matters such as teacher dismissal or student expulsion.

In doing the above, the school board must conform to the regulations of the State Board of Education and the statutes of the General Assembly.

State Boards of Education

Most states have created a state agency to make regulations governing education within the state. One of the major reasons for such an agency is to take pressure off of the legislative branch to continually pass legislation and to provide some overall direction for schooling in the state through the adoption of state-wide regulations affecting all school districts within the state. These bodies are given rule-making power by their creators.

In Pennsylvania, the State Board of Education consists of twenty-one members serving six-year terms, seventeen of whom are appointed by the governor with the approval of the Senate. The remaining four members are members of the House and Senate education committees. The Pennsylvania State Board of Education is divided into the Council of Basic Education and the Council of Higher Education. Under the powers delegated to it by the General Assembly, the State Board promulgates and adopts rules and regulations concerning educational programs in such areas as certification of school personnel, curriculum, pupil attendance and transportation, and special education.

The State Board approves regulations through a regulatory process, which includes the publication of proposed rules in the *Pennsylvania Bulletin*. After comments and revision, the State Board gives approval to the regulations but they must still be approved by the Independent Regulatory Review Commission, the House and Senate education committees, and the office of the Attorney General of Pennsylvania. When the regulations have been given final approval they are published in the *Pennsylvania Code* in volume 22. An outline of the Regulations of the State Board of Education appears below.

**22 PA Code
Regulations of the State Board of Education
Miscellaneous Provisions**

Chapter 1. Preliminary Provisions
Chapter 3. [Reserved]
Chapter 4. Academic Standards and Assessment
Chapter 5. [Reserved]
Chapter 6. [Reserved]
Chapter 7. Pupil Personnel Services
Chapter 8. Criminal History Background Checks
Chapter 9. Instructional Media Services
Chapter 11. Pupil Attendance
Chapter 12. Students
Chapter 13. [Reserved]
Chapter 14. Special Education Services and Programs
Chapter 15. Protected Handicapped Students
Chapter 17. Intermediate Units

Educational Facilities

Chapter 21. School Buildings
Chapter 23. Pupil Transportation

Higher Education

Chapter 31. General Provisions
Chapter 32. Equal Education Opportunity
Chapter 33. College and University Security
Chapter 34. Branch Campuses for State-Supported Schools

Chapter 35. Community Colleges
Chapter 36. Foreign Corporation Standards
Chapter 37. [Reserved]
Chapter 39. [Reserved]
Chapter 40. Institutional Approval
Chapter 41. [Reserved]
Chapter 42. Program Approval
Chapter 43. [Reserved]
Chapter 44. Program Standards and Eligibility Criteria for the Higher Education Equal Opportunity Act.
Chapter 45. [Reserved]
Chapter 46. [Reserved]
Chapter 47. [Reserved]
Chapter 48. [Reserved]
Chapter 49. Certification of Professional Personnel
Chapter 50. [Reserved]

The membership, powers and duties of the State Board Of Education are described in Article XXVI-A of the Public School Code.

The members of the Pennsylvania State Board of Education also constitute the State Board of Vocational Education, which operates as a separate agency. The composition and duties of this body are described in Article XVIII Sect. 18-1802 *et seq* of The Public School Code.

The Executive Branch of Government

State Departments of Education and Chief State School Officers

Most states have created some agency to provide administrative supervision for the public schools. The exact nature of this agency differs from state to state. Most states also have a chief state school officer who is in charge of the state agency. This agency can be an independent agency or a part of the executive branch of the state government and the chief state school officer can be elected or appointed. These agencies and individuals can legally exercise the powers granted them by the state constitution or statutes.

Pennsylvania Department of Education

The Pennsylvania Department of Education (PDE) , formerly the Pennsylvania Department of Public Instruction, is an administrative agency created by the General Assembly. It enforces state statutes and the regulations of the Pennsylvania State Board of Education. It has not been given policy-making powers, but it has the power, when delegated, to interpret statutes and rules. The PDE uses Basic Education Circulars (BECs) to communicate with school districts. Unless adopted and published in the *Pennsylvania Bulletin*, BECs are only informational and are not binding on local school districts.

In Pennsylvania, the Secretary of Education is appointed for a four-year term by the governor with the advice and consent of the Senate. The Secretary is a member of the cabinet. Article IV, Section 8(a) of the Pennsylvania Constitution deals with the Secretary.

The Judicial Branch of Government

The state court system also plays an important role in public school law. Most state judicial systems consist of three levels, which are similar to those of the federal system. There is a court of original jurisdiction, an intermediate appellate court, and a court of last resort. These courts have different names in different states.

In Pennsylvania, the lowest court is the Court of Common Pleas. There are two intermediate appellate courts: the Pennsylvania Superior Court and the Pennsylvania Commonwealth Court. Under current judicial procedure in Pennsylvania, most public school cases begin with some administrative agency proceeding and go to the Commonwealth Court, although there are some exceptions. The highest court in Pennsylvania is the Pennsylvania Supreme Court. In Pennsylvania, all judges are elected rather than appointed.

When it decides an issue, a court issues an opinion that may be published or unpublished. If it is published, the court's decision is given a judicial citation that lists the name of the case (plaintiff v. defendant; appellant v. appellee), the volume of the reporter(s) in which the case is published and the page at which the opinion begins, usually followed by the court and the date of decision in parentheses. For example, reference was made above to *Girard School District v. Pittenger*. This case was first decided by the Commonwealth Court for which a full citation to the *Atlantic Reporter*, published by West Publishing Company, is *Girard School District et. al., Plaintiffs, v. John C. Pittenger, as Secretary of Education and Chief Executive Officer of the State Board of Education et. al., Defendants*, 370 A. 2d, 420 (Pa. Comwlth., 1977). The decision of Commonwealth Court is found in volume 370 of the *Atlantic Reporter* (or the *Pennsylvania Reporter*), beginning at page 420. Commentary written by attorneys employed by the West Publishing Company is also presented with the decision. As mentioned previously, this case was appealed to the Pennsylvania Supreme Court. When the Pennsylvania Supreme Court reached its decision, the opinion received a different citation: 392 A.2d 261 (PA, 1978). If you recall this case also has another citation that was reported above: 481 Pa 91, which means it is also published in volume 481 of the Pennsylvania Supreme Court decisions beginning at page 91. Most state court decisions will have more than one citation because they are published in both commercial and official reporters.

Administrative Agency Law and the Exhaustion of Administrative Remedies

Most state legislatures have established local and state administrative remedies that must be exhausted before a case may be brought to a state court. The laws of each state must be consulted to determine the specific administrative remedies for each public school action and the procedures to follow to pursue them because such remedies and procedures differ from state to state. As a general rule, administrative remedies must be exhausted before a court will hear a case and the judicial procedures for appeal must be followed exactly, especially in terms of time requirements.

Several examples of administrative remedies and the court to which appeals are made in Pennsylvania are presented below. The examples for teacher dismissal, demotion and suspension are for tenured teachers. The remedies are different for non-tenured teachers. There is no right of appeal from a Commonwealth Court decision, but a petition may be filed with the Pennsylvania Supreme Court to request permission to file an appeal. A more complete description of the administrative remedies and appeals process for actions involving tenured and non-tenured teachers and students is located in [Issues in Pennsylvania School Law](#).

ISSUE	LOCAL AGENCY REMEDY	STATE ADMINISTRATIVE REMEDY/ Appeal from Local Agency	JUDICIAL APPEAL/ Initial Appellate Court
Teacher Dismissal or Demotion	School Board Hearing (under School Code procedure)	Hearing by Secretary of Education	Commonwealth Court
Teacher Suspension	School Board Hearing	Court of Common Pleas	Commonwealth Court
Student Expulsion	School Board Hearing	Court of Common Pleas	Commonwealth Court

Dismissal of a tenured teacher

According to provisions of the Pennsylvania Public School Code, a tenured teacher who has been notified of dismissal charges has the right to a hearing before the school board on the charges. This hearing must be held before the board votes on dismissal. If it has been negotiated into the contract between the board and the teachers' organization, the teacher can choose arbitration instead of the School Code

proceeding. In this case, arbitration could replace the school board hearing and the appeal from the decision of the arbitrator would be to the Court of Common Pleas. Under the School Code proceedings, the rights of the teacher are determined by both the relevant sections of the Public School Code (§§ 11-1126 through 11-1130) and relevant Pennsylvania case law. After the hearing, the school board votes on the dismissal. If there is more than one charge, the school board votes separately on each charge. A two-thirds majority vote (six out of nine) on a charge is required for dismissal.

If dismissed under Public School Code procedures (§ 11-1131), the teacher can appeal to the Secretary of Education who holds a hearing and renders an opinion in a written document, *Teacher Tenure Appeal*, which is given a citation. The Pennsylvania State Board of Education has adopted regulations concerning appeals to the Secretary of Education (22 Pa Code 351 *et seq*) The Secretary of Education is the "ultimate fact finder" who can review the record, take new testimony or place a new interpretation on the testimony taken at the school board hearing without taking additional testimony. The opinion issued by the Secretary in the *Teacher Tenure Appeal*, which must contain findings of fact and legal conclusions, marks the exhaustion of the administrative remedies for dismissal.

Administrative Agency Law (2 Pa CS 101 *et seq*) allows an appeal from the Secretary's decision to be made to the Pennsylvania Commonwealth Court. The Pennsylvania Rules of Appellate Procedure govern the procedure in filing an appeal to Commonwealth Court. After hearing arguments, the Commonwealth Court issues an opinion, which is given a judicial citation. A party dissatisfied with the decision may file a petition with the Pennsylvania Supreme Court to request permission to file an appeal. If the Pennsylvania Supreme Court grants an appeal and hears the case, the Court reaches a decision that is given a judicial citation. If a federal constitutional issue is involved, the United States Supreme Court could grant *certiorari* and hear the case. The United States Supreme Court could overturn the decision of the Pennsylvania Supreme Court.

Suspension of a tenured teacher

A tenured teacher who has been notified that she or he is going to be "laid off", which is referred to as suspension in the Public School Code, has the right to a hearing before the school board to insure that the suspension is for one of the reasons specified in the Public School Code. The hearing, which does not have to occur before the suspension, is governed by Local Agency Law. Local Agency Law provides a right to appeal from the adjudication of a local agency such as a school board. Pennsylvania law relating to the judiciary and judicial procedure governs the court to which an appeal is made. If suspended, the teacher can appeal to the Court of Commons Pleas and after that to the Commonwealth Court. After a decision of the

Commonwealth Court, a petition may be filed with the Pennsylvania Supreme Court to request permission to file an appeal.

Expulsion of a student

According to the provisions of the Pennsylvania Public School Code (§ 13-1318) and the Regulations of The State Board of Education (22 Pa Code 12.8), a student who has been notified that he or she is going to be expelled has the right to a hearing before a hearing examiner or a subcommittee of the school board or the entire school board before the expulsion. The rights of the student are determined by the Public School Code, the Regulations of the State Board of Education, and relevant Pennsylvania case law. A majority vote of the entire school board is required for expulsion. If expelled, the student can appeal to the Court of Common Pleas and after that to the Commonwealth Court. An appeal from the Commonwealth Court is the same as described in the dismissal and suspension of a tenured teacher.

The Legal Environment In Which The Public School Functions

In order to understand how law affects public education, one must conceptualize the legal environment in which the public schools operate. Constitutions, statutes, judicial opinions, rules and regulations, and policies affect the functioning of the public school. A general hierarchy depicting the influence of federal and state legal sources on public education is presented below.

The Constitution of the United States

U.S. Supreme Court decisions based upon the U.S. Constitution and congressional statutes

Congressional statutes

Rules and regulations of U.S. administrative agencies, such as EEOC and OCR in the U.S. DOE

Federal court decisions, especially those of the circuit court of appeals that has jurisdiction

State constitutions

State supreme court decisions based on state constitutions and statutes

Laws of the legislature

State appellate court decisions

Regulations and rules of state administrative agencies

Regulations and interpretations within the authority of state departments of education

School board rules and regulations

The widest jurisdiction is at the top and the most narrow jurisdiction is at the bottom: the U.S. Constitution is the supreme law of the land and the decisions of the U.S. Supreme Court affect all the federal and state laws and regulations in the nation while the rules and regulations of school boards affect only the employees and students in the local school district. More information concerning the influence of the federal government on public school law may be found in [*The Role Of The Federal Government In Public Education In The United States.*](#)

The general hierarchy of influence of these sources relevant to Pennsylvania is presented below with those with the widest jurisdiction at the top and most narrow jurisdiction at the bottom. This is a general description of the relationships of these bodies in terms of influence on public schools in Pennsylvania.

U.S. Constitution

U.S. Supreme Court decisions based on constitutional and statutory grounds

Congressional statutes

Regulations and rulings of U.S. administrative agencies

Decisions of the U.S. Third Circuit Court of Appeals

Pennsylvania Constitution

[Pennsylvania Supreme Court decisions](#)

Statutes passed by the General Assembly

[PA Commonwealth Court or PA Superior Court decisions](#)

Regulations of the Pennsylvania State Board of Education (or other state administrative agencies)

Regulations and interpretations of the Pennsylvania Department of Education made as a response to powers granted it by the General Assembly through statute or the Pennsylvania State Board of Education through regulation

Local school board policies

The local school board in making rules and regulations governing employee and student conduct must conform to the statutes, judicial decisions, and rules and regulations of the bodies that are located higher in the hierarchy.



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