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New York City School Decentralization: The Respective Powers of the City Board of Education and the Community School Boards

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COMMENTS

NEW YORK CITY SCHOOL DECENTRALIZATION: THE RESPECTIVE POWERS OF THE CITY BOARD OF EDUCATION AND THE COMMUNITY SCHOOL BOARDS

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I. Introduction

The city of New York, as well as some other cities in New York State, constitutes a single school district.[1] "The city Board of Education is charged with the general management and control of educational affairs in the city school district,"[2] but it is subject to the

1. N.Y. EDUC. LAW § 2552 (McKinney Supp. 1976) (cities of Buffalo, Rochester, Syracuse, and Yonkers); *Id.* § 2590-b (McKinney 1970), *as amended*, (McKinney Supp. 1976) (city of New York).

2. Ocean Hill-Brownsville Governing Bd. v. Board of Educ., 23 N.Y.2d 483, 485, 245 N.E.2d 219, 220, 297 N.Y.S.2d 568, 570 (1969).

plenary powers of the State Board of Regents and the State Commissioner of Education.[3]

Local school boards have long functioned within the city school district, but until recently their functions had been largely advisory, and they exercised only limited administrative powers, subject to the City Board of Education.[4] In 1968 the State Legislature began the restructuring of the New York City School District.[5] In 1969 major legislation changed the city district from a central system to a decentralized system.[6]

The basis of this legislative innovation was a finding by the State Legislature that greater community "awareness and participation" were essential both to "excellence" and "innovation" in schools.[7] The Legislature declared that the "creation of educational policy units"[8] (*i.e.*, community-based school boards) within the city-wide school district would provide an opportunity for the community to take a more active and meaningful role in the schools; and permit the development of an educational policy "closely related to the diverse needs and aspirations of the community."[9]

In establishing the more than thirty community boards deemed necessary to implement these legislative findings, the Legislature also provided for the continuation of the "board of education of the city school district of the city of New York,"[10] and determined that the educational affairs of the city school district would be under the general management and control of the City Board.[11]

Thus, in New York City, although power over the schools is shared between the City Board and the boards of the community school districts,[12] "the powers of the community boards are made subject generally to the policies established by the city board."[13]

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3. N.Y. EDUC. LAW §§ 301, 305 (McKinney 1970), *as amended*, (McKinney Supp. 1976).

4. Ocean Hill-Brownsville Governing Bd. v. Board of Educ., 23 N.Y.2d 483, 485, 245 N.E.2d 219, 220, 297 N.Y.S.2d 568, 570 (1969).

5. 1968 N.Y. Laws ch. 568.

6. 1969 N.Y. Laws ch. 330.

7. 1967 N.Y. Laws ch. 484, § 1.

8. *Id.*

9. *Id.*

10. N.Y. EDUC. LAW § 2590-b (McKinney 1970), *as amended*, (McKinney Supp. 1976).

11. *Id.* § 2552 (McKinney Supp. 1976).

12. *Id.* §§ 2590-e, 2590-g (McKinney 1970), *as amended*, (McKinney Supp. 1976).

13. New York City School Bds. Ass'n v. Board of Educ., 39 N.Y.2d 111, 119, 347 N.E.2d 568, 573, 383 N.Y.S.2d 208, 213 (1976).

The City Board (and the Chancellor[14]) are responsible for policy which has city-wide impact,[15] while the powers of the community school board are limited to matters relating to its own community school district[16] and may not be exercised inconsistently with policies established by the City Board.[17]

Despite the clear intent of the Legislature as to the primacy of authority, and despite a judicial history which has consistently interpreted article 52-A[18] as granting ultimate general management of the educational affairs to the City Board (subject to the approval of the Board of Regents and the Commissioner of Education), the community school boards have contended that they are entrusted with broad general powers over the everyday workings of the schools under their charge.[19] The conflicting positions of the community boards and the City Board with respect to the distribution of power arise from the statutes defining their respective authorities.[20] These statutes appear to overlap, but the inconsistencies disappear when one recognizes that overall statutory authority is vested in the City Board.

The legal relationship between the community school boards and the central City Board is well-defined by both legislation and court decisions.[21] The problem is more a political one, described by one

14. N.Y. EDUC. LAW § 2590-h (McKinney 1970), *as amended*, (McKinney Supp. 1976).

15. Kryger v. Board of Educ., 37 App. Div. 2d 622, 623, 323 N.Y.S.2d 777, 780 (2d Dep't 1971).

16. New York City School Bds. Ass'n v. Board of Educ., 39 N.Y.2d 111, 119, 347 N.E.2d 568, 573, 383 N.Y.S.2d 208, 213 (1976).

17. N.Y. EDUC. LAW § 2590-e (McKinney 1970), *as amended*, (McKinney Supp. 1976).

18. 1969 N.Y. Laws ch. 330.

19. The courts have consistently rejected such contentions. *See, e.g.*, Kryger v. Board of Educ., 37 App. Div. 2d 622, 323 N.Y.S.2d 777 (2d Dep't 1971) (integration); Council of Sup'rs & Adm'rs v. Board of Educ., 73 Misc. 2d 783, 342 N.Y.S.2d 398 (Sup. Ct. 1973), *aff'd*, 42 App. Div. 2d 930, 347 N.Y.S.2d 555 (2d Dep't 1973), *aff'd*, 35 N.Y.2d 861, 322 N.E.2d 273, 363 N.Y.S.2d 581 (1974) (appointment and assignment of employees); Community School Bd. No. 22 v. Board of Educ., 44 App. Div. 2d 713, 354 N.Y.S.2d 703 (2d Dep't 1974) (conversion of intermediate schools to junior high schools); *but cf.* Valdivieso v. Community School Bd. No. 1, 67 Misc. 2d 1007, 326 N.Y.S.2d 105 (Sup. Ct. 1970) (employment of district superintendent).

20. The powers and duties of the community school boards are enumerated in section 2590-e of the New York Education Law; those of the City Board are in section 2590-g. N.Y. EDUC. LAW §§ 2590-e, 2590-g (McKinney 1970), *as amended*, (McKinney Supp. 1976).

21. *See, e.g.*, New York City School Bds. Ass'n v. Board of Educ., 39 N.Y.2d 111, 347 N.E.2d 568, 383 N.Y.S.2d 208 (1976); Ocean Hill-Brownsville Governing Bd. v. Board of Educ., 23 N.Y.2d 483, 245 N.E.2d 219, 297 N.Y.S.2d 568 (1969).

court as a "power or ideological struggle between public entities created by overlapping statutes [and] performing parallel fiduciary responsibilities."[22]

This Comment will discuss the decentralization legislation and the interpretation given to that legislation by the courts of this state. It will consider the conflicting positions of the community school boards and the City Board with regard to their respective powers under New York's Education Law.

II. A History of the Decentralization Legislation

The New York State Constitution mandates that the "legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."[23] In general, the Legislature has sought to fulfill this mandate through the creation of local city boards of education.[24] Historically, the Legislature has assigned certain powers and duties to local school board districts,[25] but it has recognized that the educational affairs of the city school district would be under the general management and control of a central board of education.[26]

By the early 1960s, however, there were "conditions existing in the school system of the city of New York [which shook] public confidence, cause[d] the legislature grave concern and call[ed] for prompt corrective action."[27] The conditions included:[28] (1) "irregularities in the school construction program"; (2) "serious hazards in school buildings due to inadequate maintenance and improper repairs"; (3) "instances of corruption among employees";

22. New York City School Bds. Ass'n v. Board of Educ., 39 N.Y.2d 111, 122, 347 N.E.2d 568, 575, 383 N.Y.S.2d 208, 215 (1976). However, it is doubtful whether the situation is as critical as one proponent of school decentralization indicated when he said, "the school decentralization controversy puts into clear focus the crucial question of whether meaningful democracy is possible in the Twentieth Century." Rebell, *New York's School Decentralization Law: Two and a Half Years Later*, 2 J. L. & EDUC., 1, 38 (1973).

23. N.Y. CONST. art. XI, § 1; N.Y. EDUC. LAW § 101 (McKinney 1970).

24. N.Y. EDUC. LAW art. 52 (McKinney 1970).

25. *See, e.g.*, 1962 N.Y. Laws ch. 615 (current version at N.Y. EDUC. LAW § 2564 (McKinney Supp. 1976)).

26. N.Y. EDUC. LAW §§ 2550, 2552 (McKinney Supp. 1976).

27. 1961 N.Y. Laws ch. 971, § 1.

28. *Id.* The charges arose from the hotly contested mayoralty campaign in New York City that summer and led to a request by then Mayor Wagner for the resignation of all those then serving on the Board of Education. *See* Lanza v. Wagner, 11 N.Y.2d 317, 183 N.E.2d 670, 229 N.Y.S.2d 380 (1962).

and (4) "staggering administrative complexities and needless red tape." The Commissioner of Education warned the Legislature that the New York City schools faced a time of crisis and urged prompt corrective action.[29] In 1961 the Legislature directed the Board of Regents and the Commissioner of Education to "submit to the governor and the legislature specific recommendations for such permanent changes in the laws of the state as they may deem advisable for the organization and more effective administration of the city school district of the city of New York . . . ."[30] The Board was specifically requested to include recommendations as to:[31]

> a. The powers necessary to ensure the board of education complete freedom to operate for the best interests of the schools unhampered by restrictive influence and controls.
> b. The revitalization of the present system of local school boards in such city school district.
> c. The effective participation by the people throughout the city of New York in the government of their local schools.
> d. The delineation of functions and responsibilities between members of the board of education and the superintendent of schools and the administrative staff of such city school district.

The Legislature had been called into session by the Governor in response to the sensational charges of corruption and malfeasance emanating from New York City's vitriolic mayoral election campaign. Although the legislation was primarily intended to eliminate alleged political corruption through administrative correction, the Legislature's recognition of the need for effective community participation in the "government" of the schools was a major theoretical break from past tradition. The Legislature had put in motion the machinery for the creation of the first decentralization plan based upon political lines rather than administrative reorganization.[32] The administration of the city school district would remain the function and responsibility of the City Board of Education "unhampered by

29. 1961 N.Y. Laws ch. 971, § 1.

30. *Id.* § 8.

31. *Id.* The Legislature also reorganized and reconstituted the city's Board of Education, materially altering the method of effecting appointments to the board. *Id.* §§ 2, 3. The constitutionality and propriety of these sections were subsequently upheld. Lanza v. Wagner, 11 N.Y.2d 317, 183 N.E.2d 670, 229 N.Y.S.2d 380 (1962), *appeal dismissed,* 371 U.S. 74, *cert. denied,* 371 U.S. 901 (1962). This appointment provision (N.Y. EDUC. LAW § 2553(2)) was later repealed by 1969 N.Y. Laws ch. 330, § 2, effective April 30, 1969.

32. Rebell, *supra* note 22, at 2.

restrictive influence and controls."[33]

At the 1962 session the Legislature manifested an intent to decentralize along political lines when it enacted a new section 2564 of the Education Law.[34] The City Board of Education was given discretionary power to divide the city school district into a number of local school board districts and given complete power to alter, consolidate or divide such districts' boundaries.[35] The Board was also given "the power to appoint, and remove at its pleasure, a local school board for each such local school board district. . . ."[36] Finally, section 2564 provided:[37]

> The board of education shall have the power to determine the powers and duties of such local school boards, *which shall be advisory only,* and shall be determined in such a manner as to allow the maximum possible participation by the people of the city of New York in the affairs of the city school system.

At the same time the Legislature recognized that the aim of this and subsequent legislation was to secure "the most effective possible participation of the people of the city of New York in the affairs of the city school system, through the development of local school boards . . . ."[38] Again, it was clearly the Legislature's intent to incorporate the local district boards into the central machinery of the Board of Education, specifically limiting them to an advisory capacity. For the next six years, the local district boards exercised only limited administrative powers: "At no time . . . did the Board of Education have any power or authority to delegate to any local school board . . . any or all of its functions, powers, obligations, or duties in connection with the operation of the schools and programs under its jurisdiction . . . ."[39]

By 1967, however, greater community participation was deemed desirable. On April 19, 1967 the Board of Education committed

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33. 1961 N.Y. Laws ch. 971, §8.

34. 1962 N.Y. Laws ch. 615. This bill was prepared under the direction of the New York State Department of Education and was introduced at its request.

35. *Id.* § 3 (creating a new section 2564(1) of the New York Education Law). Section 2564 was later amended. *See* note 58 *infra.*

36. 1962 N.Y. Laws ch. 615, § 3 (creating new section 2564(2)).

37. *Id.* (creating new section 2564(3)) (emphasis added).

38. *Id.* (creating new section 2564(4)).

39. Ocean Hill-Brownsville Governing Bd. v. Board of Educ., 30 App. Div.2d 447, 449, 294 N.Y.S.2d 134, 136 (2d Dep't 1968), *aff'd,* 23 N.Y.2d 483, 245 N.E.2d 219, 297 N.Y.S.2d 568 (1969).

itself to a policy of decentralization "and expressed a desire to experiment with various forms of decentralization and community involvement in several experimental districts."[40] On April 24, the Legislature approved an act relating to the organization of the city school district.[41] Section one of that act noted that the "creation of educational policy units within the city school district of the city of New York for the formulation of educational policy for the public schools within such district . . . [would] afford members of the community an opportunity to take a more active and meaningful role in the development of educational policy closely related to the diverse needs and aspirations of the community."[42]

This was an evident change in the Legislature's intention. In 1961 the reorganization study had centered on the "delineation of functions" among the central board, the school superintendent and the administrative staff.[43] In 1967 the Legislature requested a comprehensive plan "for the creation and development of educational policy and administrative units within the city school district of the city of New York. . . ."[44] More importantly, these policy units were to be given "adequate authority" to perform their new functions.[45] The functions were:[46] (1) to foster greater community initiative and participation in the development of educational policy for the public schools within the city district; and (2) to achieve greater flexibility in the administration of such schools.

Although the Legislature did not define "adequate authority," the context would strongly suggest that it intended to elevate the new policy units above the "advisory only" status. In response to the 1967 Legislature's request that the Mayor and the City Board prepare a comprhensive study and decentralization plan,[47] the City Board created three decentralization demonstration projects in

40. 30 App. Div.2d at 448, 294 N.Y.S.2d at 136.
41. 1967 N.Y. Laws ch. 484.
42. *Id.* § 1.
43. 1961 N.Y. Laws ch. 971, § 8.
44. 1967 N.Y. Laws ch. 484, § 2.
45. *Id.*
46. *Id.*
47. *See* text accompanying note 44 *supra.*

the city.[48] These projects were governed by section 2564;[49] the powers of the demonstration district boards remained advisory only.[50]

In 1968 the Legislature adopted the principle of "maximum local involvement in education,"[51] and directed that a detailed program for decentralization be formulated "by the board of education of the city of New York against the background of urban educational problems in the city. . . ."[52] The development of such a community school system was to take into account: (1) "the educational needs of the community and children involved"; (2) "special needs of areas of low educational achievement"; (3) "the ability of the community to assume the required responsibilities and initiative"; and (4) "transportation facilities and existing school facilities."[53]

The enabling legislation established general criteria for the Board's plan.[54] It was to provide generally for: (1) the establishment of five to thirty community districts and their boundaries; (2) the number, manner of selection, terms of office, manner of filling vacancies and election procedures for members of community district governing boards; (3) the selection, term and compensation of the community superintendent; (4) the transfer to each community board of all employees of the city district serving in or in connection with the schools and programs under the jurisdiction of such community board; (5) the authority to supersede the functions of com-

48. The projects were established in the Ocean Hill-Brownsville section of Brooklyn, in the East Harlem Triangle (Manhattan), and in the Three Bridges section of lower Manhattan.

49. *See* text accompanying notes 34-39 *supra.*

50. At least one of the demonstration projects included an election of a local school governing board in Ocean Hill-Brownsville funded by the Ford Foundation. "This election was not held pursuant to any of the provisions of the Election Law. It was . . . not supervised by the Board of Education and was not conducted under guidelines laid down by the Board," although the City Board apparently acquiesced in the selection of the experimental governing board. Ocean Hill-Brownsville Governing Bd. v. Board of Educ., 30 App. Div. 2d at 448, 294 N.Y.S.2d at 136.

51. 1968 N.Y. Laws ch. 568, § 1(1). "The need for adjusting the school structure in the city of New York to a more effective response to the present urban educational challenge requires the development of a system to insure a community oriented approach to this challenge." *Id.*

52. *Id.*

53. *Id.* § 1(3). Paragraph (3) also provided for publication in local newspapers of a summary of the proposed plan and for the holding of public hearings before the submission of the plan to the Legislature.

54. *Id.* § 1(4)(a).

munity boards by the City Board when necessary; and (6) consistency of community board actions with existing City Board policies.[55] As shown by these recommendations, the State Legislature was firmly committed to the overall hegemony of a central board of education and recognized that "maximum local involvement in education"[56] did not necessarily mean autonomy.

The enabling legislation required that the Board's plan grant only two general powers to the newly created community boards: (1) a transfer of "all or any" of the functions of the City Board in regard to the schools in their community districts[57] (presumably at the discretion of the City Board);[58] and (2) the power to "enter into all appropriate contracts with the state and federal governments and private foundations and agencies, in accordance with rules and regulations of the city board, if promulgated by such board."[59]

In contrast, broad general powers were to be vested in the City

55. *Id.* Paragraph (4)(a)(5) provided for "procedures for the superseding or assumption of all or any of the functions, powers, obligations and duties of a community board in any case where such board has acted, or has failed or refused to act, in violation of law or any applicable by-law, rule or regulation of the city board or a lawful directive thereof, subject, however, to appropriate review." *Id.* Paragraph (4)(a)(6) provided for "the conduct by the appropriate community board of any matter initiated by the city board in connection with any function, power, obligation or duty transferred to such community board pursuant to such plan and pending at the time of such transfer, in the same manner and with the same effect as if conducted by the city board." *Id.*

56. *Id.* § 1(1).

57. *Id.* Paragraph (4)(b)(1) provides that the community board "shall exercise or perform all or any of the existing functions, powers, obligations and duties of the city board in relation to the operation of the schools and programs under the jurisdiction of such community boards, except as hereinafter provided."

58. 1968 N.Y. Laws ch. 568, § 4 amended section 2564 of the Education Law as follows: (1) amended subdivision 1 by substituting "shall" for "may" in the first sentence, removing the discretionary power of the City Board to create local school board districts and directing the City Board to do so; (2) amended subdivision 2 by inserting "or provide for the election of [a local school board]," giving the board the option of appointing a community board or allowing for a supervised local election; (3) amended subdivision 3 to read: "The board of education, with the approval of the regents, shall have the power to delegate to such local school boards, any or all of its functions, powers, obligations and duties in connection with the operation of the schools and programs under its jurisdiction, and may modify or rescind any function, power, obligation and duty so delegated"; (4) created the position of local school superintendent. Thus, the Legislature promulgated the paradox of requiring the City Board to create the local board, but not requiring the City Board to give those local boards any powers or functions at all.

59. 1968 N.Y. Laws ch. 568, § 1(4)(b)(2). Here again the Legislature has retained the discretionary power in the central board; the local board may not act inconsistently with the regulations established by the central board.

Board of Education,[60] and the City Superintendent.[61] The City Board was to "continue to exercise the functions, powers, obligations and duties it [had exercised] pursuant to law, except as proposed to be modified in furtherance of the objectives of [the decentralization law]";[62] it would modify, adopt and amend the by-laws, rules and regulations in such furtherance of decentralization;[63] and it was to continue to "operate such schools and programs as [might] be desirable."[64] In addition, the City Board would have authority over educational standards,[65] teacher requirements,[66] purchasing,[67] construction,[68] and employment.[69] It would appoint a City Superintendent,[70] who would act under its direction[71] as the chief administrative and executive officer of the city district.[72] He would

60. *Id.* § 1(4)(c).

61. *Id.* § 1(4)(d).

62. *Id.* § 1(4)(c)(1).

63. *Id.* § 1(4)(c)(2).

64. *Id.* § 1(4)(c)(3).

65. *Id.* § 1(4)(c)(4): "[The City Board shall] promulgate educational standards and minimum curriculum requirements for all schools and programs in the central district and community districts."

66. *Id.* § 1(4)(c)(5): "[The City Board shall] promulgate minimum education and experience requirements for all teaching and non-teaching positions in all schools in the central district . . . ."

67. *Id.* § 1(4)(c)(6): "[The City Board shall] provide for such a system of purchasing for the central district and community districts as may be desirable and necessary for the proper operation of such districts."

68. *Id.* § 1(4)(c)(7): "[The City Board shall] acquire all real property and construct all buildings and appurtenances thereto as may be required by the central district and community districts."

69. *Id.* § 1(4)(c)(8): "[The City Board shall] be the 'government' or 'public employer' of all persons employed by the city board and community boards for purposes of article fourteen of the civil service law."

70. *Id.* § 1(4)(c)(9).

71. *Id.* § 1(4)(d).

72. *Id.* §§ 1(4)(d)(1)-(2). The city superintendent is to have all the powers and duties provided in section 2566 of the Education Law, except as limited by the City Board in furtherance of the decentralization objective. Section 2566(1) makes the school superintendent the chief executive officer of the educational system. In addition, he has the duty to enforce all laws, rules and regulations relating to the management of school activities, to exercise the delegated administrative and ministerial powers of the board, to prepare the content of each course of study approved by the board, to recommend suitable textbooks, to have supervision and direction over district employees including but not limited to the right to transfer, discipline or suspend subject to the City Board's consideration and action, to have supervision and direction over course of study, examinations, promotions and all other educational activities and matters, and to issue such licenses as may be required by the Board of Education. N.Y. EDUC. LAW § 2566 (McKinney 1970).

be responsible for compliance with the educational standards promulgated by the City Board,[73] prepare the city district's consolidated budget proposals[74] and establish uniform procedures for record keeping.[75] Thus, the 1968 legislation was far from a clear mandate to the City Board to promulgate a radical change in the centralized school system. Neither control nor responsibility for educational affairs was to be irretrievably ceded to the local boards; overall supervision would remain in the central board.

III. The New York City School Decentralization Law of 1969

Article 52-A of the Education Law[76] caused a reorganization of the New York City public school system into community districts. Passed in 1969 on a message of necessity,[77] the law was an outgrowth of the growing political awareness of the city's diverse communities,[78] numerous earlier decentralization plans,[79] and the Legislature's recognition of the need for decentralization.[80]

Although the decentralization law has been criticized by both the courts[81] and the commentators[82] for its seemingly vague and contradictory provisions, a review of both the legislative history leading to its adoption and the statutory language employed suggests that these apparent contradictions resulted from political expediency and compromise during its passage rather than an inherent inconsistency in the law. Although legislative intent is determined pri-

73. 1968 N.Y. Laws ch. 568, § 1(4)(d)(3): "[The City Superintendent, under the direction of the City Board shall] be responsible for compliance with educational standards and minimum curriculum requirements, and qualifications of all personnel in all schools in the central district and community districts."

74. *Id.* § 1(4)(d)(4): "[The City Superintendent, under the direction of the City Board shall] prepare the central district budget proposal; review, modify, increase or decrease community board budget proposals; and prepare the consolidated budget of the city district."

75. *Id.* § 1(4)(d)(5).

76. 1969 N.Y. Laws ch. 330.

77. N.Y. CONST. art. 3, § 14.

78. *See* text accompanying notes 44-53 *supra.*

79. 1968 N.Y. Laws ch. 568, § 1(1).

80. *See* 1968 N.Y. Laws 2377 (McKinney) (comments of Governor Nelson A. Rockefeller on approving 1968 N.Y. Laws ch. 568, June 5, 1968).

81. *See, e.g.*, Community School Bd. No. 3 v. Board of Educ., 68 Misc. 2d 826, 328 N.Y.S.2d 535 (Sup. Ct. 1972); *see also*, Valdivieso v. Community School Bd. No. 1, 67 Misc.2d 1007, 326 N.Y.S.2d 105 (Sup. Ct. 1970).

82. *See generally* Rebell, *supra* note 22, at 1, describing article 52-A as "a patchwork and highly ambiguous law."

marily from the language used in the act,[83] the statute should be read in light of its objectives[84] and historical background.[85] Article 52-A was conceived and drawn to serve two purposes: (1) to give local groupings of citizens a greater voice in selecting educational policies appropriate to such local citizenry; and (2) to continue the central City Board of Education,[86] giving it the power to "determine all policies of the city district."[87] Thus, even though sections of article 52-A are subject to ambiguous interpretation,[88] the courts have construed article 52-A as a whole in accordance with the clear legislative intent.[89]

Article 52-A continued the City Board of Education[90] and established a community school board for each community district.[91] It created a Community Superintendent for each such district[92] and continued the Office of the Chancellor for the city school district of the city of New York.[93]

A. The Board of Education of the City School District

Broad general powers are vested in the central City Board of

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83. *See, e.g.*, Valdivieso v. Community School Bd. No. 1, 67 Misc. 2d 1007, 1008, 326 N.Y.S.2d 105, 108 (Sup. Ct. 1970) refusing to read into the specific statutory delegation of powers to local boards that they are required to consult with community groups before selecting a district superintendent.

84. Guardian Life Ins. Co. of America v. Chapman, 302 N.Y. 226, 235, 97 N.E.2d 877, 882 (1951).

85. *In re* Coates, 8 App. Div. 2d 444, 447, 188 N.Y.S.2d 400, 403 (4th Dep't 1959).

86. N.Y. EDUC. LAW § 2590-b(1)(a) (McKinney Supp. 1976).

87. *Id.* § 2590-g. "Despite the delegation of educational responsibility by the Legislature to the local geographic units comprising community districts, it is apparent that, pursuant to the provisions of article 52-a, supervisory responsibility for the community districts was retained by the City Board. . . ." Duncan v. Nyquist, 43 App. Div. 2d 630, 631, 349 N.Y.S.2d 154, 157 (3d Dep't 1973).

88. *See* text accompanying notes 260-64 *infra*.

89. *See* notes 81, 84-85 *supra*. On the general proposition of statutory construction, see People *ex rel.* Westchester Lighting Co. v. Gaus, 199 N.Y. 147, 92 N.E. 230 (1910). In *Gaus*, the court said, "Doubtless, the legislative intent is inartistically expressed; but, if that intent can be spelled out from the words of the statute, effect must be given to it." *Id.* at 149, 92 N.E. at 231. *See also* Abood v. Hospital Ambulance Serv., Inc., 30 N.Y.2d 295, 283 N.E.2d 754, 332 N.Y.S.2d 877 (1972): "Whenever such intent is apparent, from the entire statute, its legislative history, or the statutes of which it is made a part, it must be followed in construing the statute." *Id.* at 298, 283 N.E.2d at 756, 332 N.Y.S.2d at 880.

90. N.Y. EDUC. LAW, § 2590-b(1)(a), § 2590-g (McKinney 1970), *as amended*, (McKinney Supp. 1976).

91. *Id.* §§ 2590-b(2)(a), 2590-e.

92. *Id.* §§ 2590-e(1), 2590-f.

93. *Id.* § 2590-h.

Education which determines "all policies of the city district."[94] In addition, the City Board was given approval power over determinations by the Chancellor relating to course and curriculum requirements,[95] operation and capital expense estimates throughout the city district,[96] and school site selection.[97] The City Board is the public employer of all persons appointed or assigned throughout the city district,[98] and it has control and operation of the city district's academic, vocational, comprehensive and designated special high schools.[99] The City Board has supervisory authority over both the Chancellor and the community school boards. It can "cause the chancellor to prepare an annual report of the affairs of the city school system,"[100] and "require each community board to make . . . periodic reports" of its operations.[101]

In following an explicit procedural directive of the 1968 Legislature,[102] the City Board was also designated as the appeal board for matters involving the Chancellor, community boards, and community board members.[103] This supervisory capacity of the City

94. *Id.* § 2590-g.

95. *Id.* § 2590-g(1) (McKinney 1970).

96. *Id.* § 2590-g(2).

97. *Id.* § 2590-g(3).

98. *Id.* § 2590-g(5). However, the City Board must consult with the community boards with respect to collective negotiations with employee bargaining units when the interests of the community boards are affected. *Id.* § 2590-g(6).

99. Section 2590-e of the Education Law gives limited powers and duties to the community boards in regard to the control and operation of all pre-kindergarten, nursery, kindergarten, elementary, intermediate and junior high schools and programs within their respective districts, but such powers may not be exercised inconsistently with policies established by the City Board. N.Y. EDUC. LAW § 2590-e (McKinney 1970), *as amended*, (McKinney Supp. 1976). Effective April 27, 1972 the City Board in its discretion may transfer any such academic, vocational or comprehensive high schools to the community board of the district in which it is located provided "it determines the public interest will be served." *Id.* § 2590-g(9) (McKinney 1970). On January 1, 1972 the City Board was given the power and duty to establish and maintain special high schools in the city district. *Id.* § 2590-g(12) (McKinney Supp. 1976).

100. *Id.* § 2590-g(7) (McKinney 1970).

101. *Id.* § 2590-g(8).

102. *See* 1968 N.Y. Laws ch. 568, § 1(4)(a)(5) which created § 2590-*l* of the Education Law, establishing an appeal board for the enforcement of the laws, by-laws, directives, agreements, rules or regulations of the Board of Education.

103. N.Y. EDUC. LAW § 2590-g(10) (McKinney 1970), *as amended*, (McKinney Supp. 1976). "The chairman of the board shall serve as chief executive officer of such appeal board and shall have authority to direct that any appeal be considered and determined by a panel of three members designated by him." *Id.* § 2590-g(10)(a).

When sitting as an appeal board, it shall have such powers and duties with respect

Board is not restricted to appellate review of the Chancellor's determinations of policy.[104] The powers conferred upon the City Board to manage and control the educational affairs of the city of New York[105] include the authority to determine all policies of the city district. Thus, in *Community School Board No. 3 v. Board of Education,*[106] a community board sought to enjoin the City Board of Education and the Chancellor from promulgating or enforcing rules concerning the "excessing" of personnel.[107] In dismissing the complaint without prejudice, the court held that the dispute would best be decided, at least initially, within the education system itself.[108] Pursuant to this holding, the community board appealed to the State Commissioner

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to the hearing and determination of appeals as the [State] commissioner of education shall, by regulation, determine. . . . [The designated panel] . . . shall have authority to stay temporarily, pending final determination by the appeal board: (i) enforcement of an order of the chancellor from which the community board is appealing; and (ii) any action of the community board inconsistent with such order. Upon final determination of an appeal under this section, the appeal board shall issue an order either: (i) affirming the order of the chancellor; or (ii) modifying or reversing such order if it is determined to be arbitrary or capricious or contrary to law, regulations or sound educational policy.

Id. § 2590-g(10)(b) (McKinney 1970). A party aggrieved by a final determination of the appeal board may appeal to the State Commissioner. Section 310 of the Education Law makes the decision of the Commissioner of Education on an appeal "final and conclusive and not subject to question or review in any place or court whatever." His decision is subject to review only if it is arbitrary. Board of Educ. v. Allen, 6 N.Y.2d 127, 136, 60 N.E.2d 60, 64, 188 N.Y.S.2d 515, 520 (1959).

104. "Other school-related disputes not arising from the exercise of powers conferred upon the chancellor by Education Law § 2590-*l* are not . . . reviewable by the city board within the exercise of appellate jurisdiction but must nevertheless be brought to the city board in its administrative capacity under the rule of law which requires that administrative remedies be exhausted prior to commencement of proceedings to secure judicial review." *In re* Tilden High School P.T.A., 12 [N.Y.] Educ. Dep't Rep. 176, 178-79 (1973).

105. N.Y. EDUC. LAW § 2552 (McKinney Supp. 1976).

106. 68 Misc. 2d 66, 326 N.Y.S.2d 130 (Sup. Ct. 1971).

107. *Id.*, 326 N.Y.S.2d at 131. The term "excessing" refers to the situation in the City District where as the result of budgetary stringencies it was necessary to reduce teaching staffs in various schools in the city. The conflict in *Community School Board No. 3* arose from the community school board's desire to "excess" teachers on the basis of educational criteria rather than guidelines which were promulgated by the Chancellor and which required that substitute teachers be laid off first, and then probationary teachers in inverse order of seniority, and that such seniority be determined on a city-wide basis. *Id.* at 66-67, 326 N.Y.S.2d at 131-32.

108. 68 Misc. 2d at 67, 326 N.Y.S.2d at 132. "With respect to the problems of excessing and tenure . . . a strong argument can be made that these are problems that affect more than one community school district and thus must be made subject to centrally determined city wide policies to be established by the city Board of Education." *Id.* (citations omitted).

of Education[109] who dismissed the appeal holding that the community boards must defer to the City Board when uniformity of policy throughout the City School District is necessary.[110]

By analogy, just as the State Board of Regents has state-wide powers, the City Board enjoys similiar autonomy within the city district.[111]

B. The Chancellor of the New York City School District

The Office of the Chancellor was created to exercise the powers and duties of the former Superintendent of Schools of the city school district.[112] However, the Chancellor must "exercise all his powers and duties in a manner not inconsistent with the policies of the City Board,"[113] by whom he is employed.[114]

The broad language of section 2590-h empowers the Chancellor to act as both the chief administrative and executive officer of the city district.[115] Among his administrative powers are the power to establish, control, operate, or discontinue senior high schools, special

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109. *In re* Community School Bd. No. 3, 11 [N.Y.] Educ. Dep't Rep. 154 (1972).

110. "The broad grant of power to the community boards with respect to the control and operation of pre-kindergarten through junior high school programs within the community district provided by Education Law § 2590-e is tempered by the proviso that their powers be '. . . not inconsistent with the provisions of [article 52-A] and the policies established by the city board." *Id.* at 156-57.

For a similiar case in the state courts, see Council of Sup'rs and Adm'rs v. Board of Educ., 73 Misc. 2d 783, 342 N.Y.S.2d 398 (Sup. Ct. 1973), holding that the statutory power of the community boards to appoint and assign supervisory personnel must yield to the superior power of the City Board of Education to establish a city-wide uniform policy for excessing or interdistrict transferring of personnel.

111. New York City School Bds. Ass'n v. Board of Educ., 39 N.Y.2d 111, 119, 347 N.E.2d 568, 573, 383 N.Y.S.2d 208, 213 (1976).

112. N.Y. EDUC. LAW § 2590-h (McKinney 1970), *as amended*, (McKinney Supp. 1976). *See* text accompanying notes 70-75 *supra*. According to section 2566 of the New York Education Law, the superintendent of schools is charged with specific limited duties "subject to the by-laws of the board of education." *Id.* § 2566 (McKinney 1970). In addition, section 2590-h specifically states that where a power or duty generally provided to the superintendent is "otherwise provided herein" to another entity the chancellor shall not retain that power.

113. *Id.* § 2590-h (McKinney 1970), *as amended*, (McKinney Supp. 1976).

114. *Id.* "Where there is a conflict between the views of the chancellor and those of the city board as to how the board's policy . . . can best be achieved, the views of the board must prevail unless they are arbitrary, capricious or contrary to law or State educational policy." *In re* Community School Bd. No. 18, 12 [N.Y.] Educ. Dept. Rep. 76, 79-80 (1972).

115. The Chancellor is given all the powers of the superintendent of schools and of the board of education subject to the restrictions stated in note 112 *supra*, and in section 2590-h(17) of the Education Law.

education programs and city-wide programs servicing more than one community district;[116] the power to develop a plan for the establishment of a comprehensive high school for each community district;[117] and the power to establish uniform procedures for record keeping, accounting, reporting and auditing throughout the city district.[118] In the area of employment the Chancellor must "[e]nsure compliance with [the] qualifications established for all personnel employed in the city district,"[119] "[d]evelop and furnish pre-service and in-service training programs for [such] employees,"[120] and "[a]ppoint teacher-aides for the schools and programs under his jurisdiction."[121] Additionally, the Chancellor retains jurisdiction over all custodial employees,[122] and may also employ or retain counsel to act as attorney to the Office of the Chancellor (but not to the City Board).[123] In the management of the schools and programs in the city district, he must furnish the community boards with the results of periodic examinations and evaluations of such schools and programs.[124] Furthermore, he may require periodic reports of the community boards,[125] and may also "[e]stablish a parents' association or a parent-teachers' association in each school under [his] jurisdiction."[126]

The Chancellor is given a number of specific functions throughout

116. N.Y. EDUC. LAW § 2590-h(1)-(2) (McKinney 1970). However the Chancellor must consult with any community board which will be affected by: (1) the substantial expansion or reduction of such existing schools or programs within the community district; (2) the initial utilization of a community district school or facility for such a school or program; or (3) the institution of any new program within the community district. *Id.* In addition, the Chancellor may establish or continue voluntary programs under which students may attend a public school in another community. *Id.* § 2590-h(7).

117. Such plans are made "[s]ubject to the approval of the city board." *Id.* § 2590-h(3) (McKinney Supp. 1976).

118. *Id.* §§ 2590-h(21)-(22).

119. *Id.* § 2590-h(20).

120. *Id.* § 2590-h(14) (McKinney 1970).

121. Appointments can only be made "within the budgetary allocation therefor." *Id.* § 2590-h(4).

122. *Id.* § 2590-h(5).

123. *Id.* § 2590-h(6).

124. *Id.* § 2590-h(9).

125. *Id.* § 2590-h(11). At least one of these reports must be "an annual report covering all matters relating to schools under [the community boards'] jurisdiction including, but not limited to, the evaluation of the educational effectiveness of such schools and programs connected therewith." *Id.* § 2590-h(10).

126. *Id.* § 2590-h(15).

the city district, which may be delegated to the individual community boards with respect to the schools and programs under their jurisdiction. These functions include: (1) technical assistance to community boards; (2) acquisition of necessary warehouse space on a regional basis (after consultation with the community boards); and (3) purchasing services on a city-wide, regional or community district basis.[127]

The executive powers of the Chancellor are given to him in broad sweeping language. The decentralization law provides that the Chancellor shall: (1) "[p]romulgate minimum educational standards and curriculum requirements for all schools and programs throughout the city district, and . . . examine and evaluate periodically all such schools and programs with respect to: (i) maintenance of such educational standards and curriculum requirements, and (ii) evaluation of the educational effectiveness of such schools and programs. . . .";[128] (2) "[p]romulgate such rules and regulations as he may determine to be necessary or convenient to accomplish the purposes of [Article 52-A], not inconsistent with the policies of the city board.";[129] (3) "[p]ossess those [powers] described in section twenty-five hundred fifty-four of [the Education Law], the exercise of which shall be in a manner not inconsistent with the policies of the city board.";[130] (4) "[p]ossess those [powers and duties] contained in section nine hundred twelve of [the Education Law] and those provisions of article fifteen thereof which relate to non-public schools, those contained in sections five hundred twenty-two and five hundred twenty-four of the New York city charter and those contained in article seventy-three of [the Education Law], the exercise of which shall be in a manner not inconsistent with the policies of the city board."[131]

127. *Id.* § 2590-h(13).

128. *Id.* § 2590-h(8).

129. *Id.* § 2590-h(16).

130. *Id.* § 2590-h(17). Section 2554 deals with the powers and duties of a city board of education.

131. *Id.* § 2590-h(18). Section 912 deals with health and welfare services to all children in the city district; article 15 empowers a board of education to designate, purchase and loan textbooks or supplies within the school district; article 73 entitled "Apportionment of Public Moneys," encompasses sections 3601-3611 ("General Provisions"), sections 3620-3629 ("State Aid Transportation Quota"), and section 3635 ("Transportation"); section 522 of the New York City Charter requires an annual written report from the Board of Education to the Mayor on the administrative procedures taken in respect to the schools under its jurisdiction

Finally, the Chancellor of the city district is charged with the enforcement of all applicable laws, rules or regulations, directives and agreements between the City Board and the community boards.[132] He is given authority to ensure that the community boards' conduct is consistent with the educational and operational policies of the City Board. He may issue an order requiring the community board to cease any improper conduct and may enforce that order by the use of appropriate means, which include:[133]

> (a) supersession of the community boards by the chancellor or a trustee appointed by him with respect to those powers and duties of such community board deemed necessary to ensure compliance with the order; and
> (b) suspension or removal of the community board or any member or members thereof.

Thus, the power of both the Chancellor and the City Board to take action to enforce the policy determinations in the city district, and the power of the City Board to review determinations of the Chancellor pursuant to that policy are well settled.[134] These powers encompass both the "resolution of matters crossing Community School District lines"[135] and certain intradistrict policy determinations.[136]

(*e.g.*, number of schools, attendance figures): "The board of education shall also make in said reports such suggestions and recommendations relative to the public schools of the city as it may deem proper." Section 524 of the New York City Charter empowers the board to remove school officers who are shown to have a direct or indirect interest in any contract with the public school system or with any of the schools within the system. (This section of the City Charter is similar in language and intent to section 2590-g(13-(14) of the Education Law, recently added by 1975 N.Y. Laws ch. 810, § 1.)

132. N.Y. EDUC. LAW § 2590-*l*(1) (McKinney 1970); *In re* Community School Bd. No. 20, 12 [N.Y.] Educ. Dep't Rep. 297 (1973). The Chancellor may delegate any of his administrative or executive functions to such subordinate officers or employees as he deems appropriate. N.Y. EDUC. LAW § 2590-h (McKinney 1970), *as amended*, (McKinney Supp. 1976).

133. N.Y. EDUC. LAW § 2590-*l*(1) (McKinney 1970). The community board or any suspended or removed member may appeal such action of the Chancellor to the City Board pursuant to section 2590-g(10) of Education Law. *Id.* § 2590-*l*(2). *See also* 8 N.Y.C.R.R. § 113.2 (1976).

134. Kryger v. Board of Educ., 37 App. Div. 2d 622, 323 N.Y.S.2d 777 (2d Dep't 1971); *In re* Community School Bd. No. 18, 12 [N.Y.] Educ. Dep't Rep. 76 (1972); *In re* Community School Bd. No. 29, 11 [N.Y.] Educ. Dep't Rep. 194 (1972).

135. Kryger v. Board of Educ., 37 App. Div. 2d 622, 623, 323 N.Y.S.2d 777, 780 (2d Dep't 1971).

136. Brown v. Board of Educ., 42 App. Div. 2d 702, 345 N.Y.S.2d 595 (2d Dep't 1973) (approval by Chancellor of termination of probationary teachers); Sife v. Board of Educ., 65 Misc. 2d 383, 317 N.Y.S.2d 557 (Sup. Ct. 1970) (power to suspend tenured high school teacher for cause); *In re* Community School Bd. No. 28, 12 [N.Y.] Educ. Dep't Rep. 31 (1972) (changes of attendance zones).

C. The Community School Boards

The essential element of article 52-A is the community school board of each community district in the city district.[137] Under section 2590-e, the great bulk of the authority over the city's prekindergarten, nursery, kindergarten, elementary, intermediate, and junior high schools was allocated to the various community school districts. This included the general power to "manage and operate the schools and other facilities under [a district's] jurisdiction."[138] However, the powers and duties granted the community boards may not be exercised inconsistently with the other provisions of article 52-A or the policies established by the City Board.[139]

Subject to this limitation, the enumerated powers of the community school boards are largely managerial and advisory,[140] except for the independent authority to employ or retain counsel.[141] The authority of the community boards to employ a community superintendent and to appoint teacher-aides is subject to the guidelines established by the Chancellor.[142]

The administrative functions of the community boards include: (1) the duty to make repairs to all buildings under its jurisdiction;[143] (2) the operation of social centers, recreational and extra-curricular programs,[144] and cafeterias;[145] and (3) maintenance of discipline in

137. N.Y. EDUC. LAW § 2590-b(2)(a) (McKinney Supp. 1976).

138. *Id.* § 2590-e(4) (McKinney 1970). *See* Pride v. Community School Bd. No. 18, 482 F.2d 257, 259 (2d Cir. 1973).

139. N.Y. EDUC. LAW § 2590-e (McKinney 1970), *as amended*, (McKinney Supp. 1976).

140. The Legislature realized the limited authority which was being given to the community boards by the select powers and duties of section 2590-e. In granting to the boards "all the powers and duties, vested by law in, or duly delegated to, the local school board districts and the board of education of the city district on the effective date of this article," it was specifically provided that those powers and duties shall not be limited by the enumeration of the specific powers. *Id.*

141. *Id.* § 2590-e(10) (McKinney 1970).

142. *Id.* §§ 2590-e(1)(a), 2590-e(9) (McKinney 1970), *as amended*, (McKinney Supp. 1976). Section 2590-j(2) provides that "[t]he Chancellor shall promulgate minimum education and experience requirements for all teaching and supervisory service positions." These requirements must meet minimum state requirements, and the positions created must be done so with the approval of the City Board, which is also required for their abolition. *Id.* § 2590-j(2) (McKinney 1970).

143. *Id.* § 2590-e(5). Total expenditures for such repairs "[may] not exceed two hundred fifty thousand dollars in any fiscal year. Expenditures for repairs in excess of this limit shall be authorized only by the chancellor." *Id.*

144. *Id.* § 2590-e(6).

145. *Id.* § 2590-e(7) (McKinney Supp. 1976). The community may utilize cafeteria serv-

the schools and programs under their jurisdiction.[146] The community board also acts as advisor to the Chancellor and the City Board on construction proposals and building procedures,[147] and advises the Mayor and the City Council on proposals in connection with the capital budget.[148]

The remaining enumerated powers are executive in nature; the community boards are given authority without autonomy. A community board has the power to "generally manage and operate the schools and other facilities under its jurisdiction,"[149] subject to the policy determination of the City Board.[150] It has the power to appoint, assign, promote, and discharge all its employees, define their duties, and fix their compensation and the terms and conditions of their employment,[151] but may not exercise these powers inconsistently with the policies of the City Board.[152] Each community board can "determine matters relating to the instruction of students, including the selection of textbooks and other instructional materials; provided, however, that such textbooks and other instructional materials shall first have been approved by the chancellor."[153]

Thus, "[d]espite the delegation of educational responsibility by the Legislature to the local geographic units comprising community districts, it is apparent that, pursuant to the provisions of article 52-A, supervisory responsibility for the community districts was retained by the City Board. . . ."[154] For example, in *Community School Board No. 22 v. Board of Education,*[155] the court held that the community school board lacked authority, without the approval of the City Board, to convert intermediate schools to junior high schools in direct conflict with the established policy of the City Board with respect to four-year comprehensive high schools.[156]

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ices for school-related activities and may furnish meals for the elderly, subject to the approval of the City Board. *Id.*

146. *Id.* § 2590-e(8) (McKinney 1970).
147. *Id.* § 2590-e(11), (13)-(19).
148. *Id.* § 2590-e(12).
149. *Id.* § 2590-e(4).
150. *Id.* § 2590-e (McKinney 1970), *as amended,* (McKinney Supp. 1976).
151. *Id.* § 2590-e(2) (McKinney 1970).
152. *Id.*
153. *Id.* § 2590-e(3).
154. Duncan v. Nyquist, 43 App. Div. 2d 630, 631, 349 N.Y.S.2d 154, 157 (3rd Dep't 1973).
155. 44 App. Div. 2d 713, 354 N.Y.S.2d 703 (2d Dep't 1974).
156. *Id.* at 714, 354 N.Y.S.2d at 705. Intermediate schools comprise grades 6-8, junior high

The powers conferred upon the community boards are limited to those matters relating to the board's district, and one board cannot unilaterally make a determination that would materially affect another district.[157] "[I]t is clear that the city board may promulgate and enforce, as against the various community boards, its basic policies in matters transcending district boundaries."[158] Thus, it has been held that the City Board has primary authority in establishing a uniform city-wide standard with respect to the hours of instruction in the public schools,[159] alleviation of racial imbalance,[160] formulation of city-wide excessing policies,[161] regulation of access patterns to the high schools,[162] and interpretation of obligations under a collective bargaining agreement.[163]

However, a community board has substantial discretion with respect to the structuring of schools under its jurisdiction and the establishment of intradistrict policies.[164] It may modify existing intradistrict organizational patterns to restructure its elementary or intermediate schools when such modification does not violate state law or a prevailing policy of the City Board.[165] But the ultimate responsibility for making decisions on matters delegated to the community boards continues to rest with the City Board of Education where consistency of city-wide policy is essential.

IV. Court Interpretation of the School Decentralization Law

A. The Ocean Hill-Brownsville Decisions

Before the enactment of the decentralization law the New York City Board of Education had established three experimental decen-

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schools comprise grades 7-9. The City Board of Education has retained the control of four year comprehensive high schools (grades 9-12) throughout the city district. N.Y. EDUC. LAW § 2590-g(9) (McKinney 1970). The conversion attempt by Community School Board 22 would have brought the ninth grade under its supervision.

157. Kryger v. Board of Educ., 37 App. Div. 2d 622, 323 N.Y.S.2d 777 (2d Dep't 1971).

158. *In re* Parents Ass'n of J.H.S. No. 278, 13 [N.Y.] Educ. Dep't Rep. 249, 250 (1974).

159. New York City School Bds. Ass'n v. Board of Educ., 39 N.Y.2d 111, 347 N.E.2d 568, 383 N.Y.S.2d 208 (1976).

160. Kryger v. Board of Educ., 37 App. Div. 2d 622, 323 N.Y.S.2d 777 (2d Dep't 1971).

161. *In re* Community School Bd. No. 3, 11 [N.Y.] Educ. Dep't Rep. 154 (1972).

162. *In re* Community School Bd. No. 6, 12 [N.Y.] Educ. Dep't Rep. 164 (1973).

163. *In re* Community School Bd. No. 6, 13 [N.Y.] Educ. Dep't Rep. 47 (1973).

164. *In re* Community School Bd. No. 6, 12 [N.Y.] Educ. Dep't Rep. 164 (1973).

165. *Id.*

tralized school governing boards within the city district.[166] The development of these districts within the city school system was marked by political conflicts and confrontation, as the community districts sought autonomy and the City Board sought to retain central control.[167]

In at least one of these experimental districts—Ocean Hill-Brownsville—members of an experimental school governing board were selected. Although these members were not chosen pursuant to the authority of any statute, the City Board of Education apparently acquiesced in their selection.[168] At that time the local governing board had no statutory authority in connection with the district schools and programs, which remained under the City Board's jurisdiction.[169] The powers of the local board were "advisory only,"[170] and the statute provided that the local board could be removed at the pleasure of the City Board.[171]

It was this provision which was the basis of the challenge in *Ocean Hill-Brownsville Governing Board v. Board of Education.*[172] In that

166. As early as April 19, 1967, the New York City Board of Education had espoused the policy of decentralization throughout the city school district. The demonstration districts were established "to experiment with various forms of decentralization and community involvement." Ocean Hill-Brownsville Governing Bd. v. Board of Educ., 30 App. Div. 2d 447, 448, 294 N.Y.S.2d 134, 136 (2d Dep't 1968), *aff'd*, 23 N.Y.2d 483, 245 N.E.2d 219, 297 N.Y.S.2d 568 (1969).

167. *See, e.g.*, Council of Supervisory Ass'ns v. Board of Educ., 23 N.Y.2d 458, 245 N.E.2d 204, 297 N.Y.S.2d 547 (1969).

168. Ocean Hill-Brownsville Governing Bd. v. Board of Educ., 30 App. Div. 2d 447, 448, 294 N.Y.S.2d 134, 136 (2d Dep't 1968). Under the then controlling statute, section 2564(2) of the Education Law (*see* notes 49-50 *supra* and accompanying text), the Board of Education did not have the power to provide for the election of a local school board, but under a grant from the Ford Foundation an election was held in Ocean Hill-Brownsville on August 3, 1967. Seven members of the community were elected. "These seven in turn chose five other members. The teaching staff in the eight schools of the district chose four teacher members. The local administrative staff chose two supervisory members. The members of the board chose another member." *Id.*

169. N.Y. EDUC. LAW § 2564(3) (McKinney 1967), *as amended*, N.Y. EDUC. LAW § 2564(3) (McKinney 1970) gave the local boards advisory powers only; the enabling legislation of 1968 N.Y. Laws ch. 568 did not become effective until June 5, 1968.

170. Ocean Hill-Brownsville Governing Bd. v. Board of Educ., 30 App. Div. 2d 447, 449, 294 N.Y.S.2d 134, 136 (2d Dep't 1968). "On September 4 and 11, 1968 the Board of Education delegated, subject to the approval of the Board of Regents, certain of its functions to the 33 local school districts created by it. On October 17, 1968 the Board of Regents gave its approval to this delegation of powers and the creation of the 33 districts." *Id.* at 450, 294 N.Y.S.2d at 137.

171. N.Y. EDUC. LAW § 2564(2) (McKinney 1970).

172. 30 App. Div. 2d 447, 294 N.Y.S.2d 134 (2d Dep't 1968), *aff'd*, 23 N.Y.2d 483, 245

case, the local administrator of the demonstration school project[173] removed a number of teachers in the district from their teaching assignments, and attempted to transfer them out of the district. After an administrative hearing, the Superintendent of Schools and the City Board of Education directed the Governing Board and the Administrator to reassign the teachers to their former teaching positions. When the Governing Board refused to follow this directive, the City Board of Education suspended the Governing Board for thirty days.[174] The Governing Board sought to compel its reinstatement, and to require the City Board to refrain from further interference with its administration of the district. The supreme court's dismissal of the action was affirmed by the appellate division which found that the "local board and its administrator failed and refused to obey the lawful directives of the Board of Education."[175] This per curiam opinion was unanimously affirmed by the court of appeals[176] which rejected the local board's contention that it was an elected body that could not be summarily suspended or removed without procedural due process.[177]

The litigation over the suspension of the Ocean Hill-Brownsville

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N.E.2d 219, 297 N.Y.S.2d 568 (1969).

173. The administrator was appointed by the Board of Education on September 27, 1967 on the recommendation of the local Governing Board. 30 App. Div. 2d at 449, 294 N.Y.S.2d at 137.

174. 30 App. Div. 2d at 450, 294 N.Y.S.2d at 137-38. "[T]he suspension of the local board by the city board was directed by the State Commissioner of Education because the local board had acted illegally . . . . In view of the State Commissioner's over-all plenary power, the city board's action was both proper and required." 23 N.Y.2d at 488, 245 N.E.2d at 222, 297 N.Y.S.2d at 572.

175. 30 App. Div. 2d at 451, 294 N.Y.S.2d at 138-39.

> It is the clear intent of the statute . . . and of the decentralization plan with its delegation of certain functions to local school boards, which has been approved by the Board of Regents, that all local school boards and their administrators . . . even with respect to the delegated functions and the exercise thereof, are subject to the control, supervision, and directives of the Board of Education and its Superintendent of Schools. The Board of Education and its Superintendent are, and were intended to be, paramount and superior. No local school board, or its administrator, is, or was intended to be, autonomous. Any other result would lead to chaos in the administration of a unified system of education.

Id., 294 N.Y.S.2d at 139.

176. 23 N.Y.2d 483, 245 N.E.2d 219, 297 N.Y.S.2d 568 (1969).

177. *Id.* at 488, 245 N.E.2d at 222, 297 N.Y.S.2d at 572. "[I]n the absence of legislation giving this local board autonomy, a fixed term of office, or a tenure terminable only for cause, the board is subject entirely both as to its powers and term of office to its creating agency, the city Board of Education." *Id.*

Governing Board reached the court of appeals before the effective date of article 52-A of the Education Law and after the interim 1968 legislation was in effect. The demonstration projects were creatures of the City Board of Education and had no power which could be exercised independently of the City Board. Under the legislation in existence at the time the alleged cause of action arose, "[n]either the control nor responsibility for educational affairs . . . [could be] irretrievably ceded to a local board by the State Board of Regents, the State Commissioner of Education, or the city board."[178]

The *Ocean Hill-Brownsville* court summarized the Education Law as it applied in the city school district of the city of New York in January 1969 as follows:[179]

> The city board [was] granted by statute all ultimate power over the exercise of functions and the local board's service [was] at the pleasure of the city board. True, under the 1968 statute and the permanent plan [Article 52-A], yet to be approved, local boards [would] have a kind of tenure, but [would] still be subject to over-all control by the city board and subject to removal for cause (L. 1968, ch. 568, § 1, subd. 5).

Thus, it was the apparent intent of both the existing and pending legislation that the City Board would retain plenary power over the schools of the New York City School District. In general, both the court opinions and the judicial decisions of the Commissioner of Education have followed the ruling of the court of appeals in *Ocean Hill-Brownsville* holding that the "city board may promulgate and enforce, as against the various community boards, its basic policies in matters transcending district boundaries."[180] Thus, in *Community School Board No. 22 v. Board of Education,*[181] where the resolution adopted by the community board was in direct conflict with the established policy of the City Board of Education, the court held that the community board "lacked authority to implement the change in question without the approval of the city board of education."[182] Similarly, in *Kryger v. Board of Education,*[183] the City Board's order superseded a resolution of the community school

178. *Id.*
179. *Id.*
180. *In re* Parents Ass'n of J.H.S. No. 278, 13 [N.Y.] Educ. Dep't Rep. 249, 250 (1974).
181. 44 App. Div. 2d 713, 354 N.Y.S.2d 703 (2d Dep't 1974).
182. *Id.* at 714, 354 N.Y.S.2d at 705.
183. 37 App. Div.2d 622, 323 N.Y.S.2d 777 (2d Dep't 1971).

board which contravened an existing city-wide integration scheme. The court held the City Board had the authority to override a community board resolution which was clearly an abuse of power.[184]

With respect to policy having city district-wide effect, the decentralization law has been interpreted as prohibiting community board action which contravenes existing policies of the City Board,[185] and as empowering the City Board of Education to promulgate city-wide policy determinations which may supersede established but inconsistent community board resolutions.[186] It is apparent that community boards must defer to the City Board when uniformity of policy throughout the city school district is necessary.[187]

However, the courts generally have recognized the role of the State Department of Education in determining the over-all administrative policy of the city district.[188] Where the issue is the "proper administration of the school system,"[189] the courts have recognized that both the community boards and the City Board are subject to the plenary power of the Education Department.[190]

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184. *Id.* at 623, 323 N.Y.S.2d at 780.

185. Community School Bd. No. 22 v. Board of Educ., 44 App. Div. 2d 713, 354 N.Y.S.2d 703 (2d Dep't 1974); *see* text accompanying note 183 *supra.*

186. Kryger v. Board of Educ., 37 App. Div. 2d 622, 323 N.Y.S.2d 777 (2d Dep't 1971); *see* text accompanying note 185 *supra.*

187. *In re* Community School Bd. No. 3, 11 [N.Y.] Educ. Dep't Rep. 154, 157 (1972). *Accord,* Council of Sup'rs and Adm'rs v. Board of Educ., 73 Misc. 2d 783, 342 N.Y.S.2d 398 (Sup. Ct. 1973).

188. Community School Bd. No. 2 v. Lindsay, 71 Misc. 2d 85, 86, 335 N.Y.S.2d 320, 321 (Sup. Ct. 1972).

189. Community School Bd. No. 3 v. Board of Educ., 68 Misc. 2d 826, 830, 328 N.Y.S.2d 535, 540 (Sup. Ct. 1972); Valdivieso v. Community School Bd. No. 1, 67 Misc. 2d 1007, 326 N.Y.S.2d 105 (Sup. Ct. 1970).

190. Community School Bd. No. 3 v. Board of Educ., 68 Misc. 2d 66, 326 N.Y.S.2d 130 (Sup. Ct. 1971). "All of the questions involved in this case are questions which the Commissioner of Education can pass upon in a more informed manner than the courts. Furthermore, while the courts can only review the questions of law or arbitrariness, the Commissioner of Education may review questions of discretion and policy. He has 'over-all plenary power' [citing *Ocean Hill-Brownsville*] . . . . Thus, if the courts . . . have to act, they will have before them the discretionary decision of the ultimate repository of discretion in the educational system." *Id.* at 71, 326 N.Y.S.2d at 136.

In a recent pronouncement on the subject, the United States Supreme Court has stated: "By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." Epperson v. Arkansas, 393 U.S. 97, 104 (1968). In *Epperson,* the Court

B. The Executive Functions of the Community School Boards

It has been argued that the executive functions[191] delegated the community boards are subject only to broad, general guidelines to be established by the Chancellor and the City Board,[192] and that the community boards may exercise independent jurisdiction over the schools in their district as long as their actions and policy decisions are not inconsistent with those of the City Board. The gist of this argument is that the central board is charged only with the function of establishing minimum educational standards, and that the general management and operation of the schools and programs which meet these minimum standards resides solely in the community school boards. In *Community School Board No. 3 v. Board of Education,*[193] the court recognized the problem which this argument raises in certain policy areas:[194]

> With respect to the problems of excessing and tenure . . . a strong argument can be made that these are problems that affect more than one community school district and thus must be made subject to centrally determined citywide policies to be established by the City Board of Education. . . . On the other hand, the Community Superintendent makes a

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did strike down a state statute which made it unlawful for a teacher in any state-supported school to use a textbook that taught that men are descended from a lower order of animals.

The New York Education Law provides statutory review procedures within the education system for such situations. Section 2590-*l* of the Education Law deals with the enforcement of applicable rules, regulations and directives by the Chancellor and the establishment of an appeal board within the Department. The authority of the appeal board is set out in section 2590-g(10) of the Education Law, and is determined generally by regulations of the State Commissioner.

The Rules and Regulations Governing Grievances Against Community School Boards or Members "provide[s] a nonstatutory administrative review of any grievances not properly before the [city] board in its appellate capacity [under section 2590-g(10)]." *In re* Parents Ass'n of J.H.S. No. 278, 13 [N.Y.] Educ. Dep't Rep. 75, 77 (1973).

191. N.Y. EDUC. LAW §§ 2590-e(2)-(4) (McKinney 1970); *see* text accompanying notes 148-52 *supra.*

192. Rebell, *supra* note 22.

> In exercising this broad curriculum power [of section 2590-e], community boards must, however, comply with state-wide legal and administrative requirements (*i.e.*, such as providing instruction in arithmetic, reading, U.S. history, etc.) and with general supervisory standards established by the Chancellor of the City school district and the City Board pursuant to powers elsewhere granted to these officials to set minimum educational standards and to evaluate the educational effectiveness of programs in all schools in the City District [sections 2590-g(1), 2590-h(8)]."

Id. at 7-8.

193. 68 Misc. 2d 66, 326 N.Y.S.2d 130 (Sup. Ct. 1971).

194. *Id.* at 67, 326 N.Y.S.2d at 132.

strong plea that the rigid implementation of the Chancellor's guidelines may wreck some very important special educational programs in the community district's schools.

The court refused to adopt either policy argument, preferring to dismiss the petition without prejudice to an appeal for determination by the State Commissioner of Education.[195] The problem arose again in *Council of Supervisors & Administrators v. Board of Education,*[196] where the question was whether the City Board had the power to assign excessed supervisors and administrators from one community school district to another without the consent of the receiving district. Petitioners argued that the City Board's excessing rules compelled the community boards to make room for unknown employees and that the community personnel would be replaced by administrators having no prior contact with the district. In dismissing the petition which sought to enjoin the City Board's excessing policy, the court observed that different rules for excessing personnel in the various community districts were neither desirable, permissable nor consistent with sound educational policy.[197] It concluded that "[t]he power of the city board to manage and control education affairs (Education Law § 2552) and to determine all policies of the city district (Education Law § 2590-g) also includes the power to transfer supervisors from one district to another or to headquarters in implementation of a uniform city-wide excessing policy."[198] Thus, the statutory power of the community school boards must yield to the paramount authority of the City Board in policy matters.

An interesting example of this authority relationship between the community boards and the City Board is the operation of cafeteria services in each community district. Under article 52-A as originally adopted, the community boards were given the power and duty to "operate cafeteria or restaurant services for pupils and teachers.

195. The court held that the dispute, concerning the excessing of teaching personnel, would best be decided, at least in the first instance, within the educational system. *Id.* (On further appeal the Commissioner of Education held that the City Board, as the public employer of all district employees, is authorized to establish uniform criteria for the excessing of professional personnel by the community boards. *In re* Community School Bd. No. 3, 11 [N.Y.] Educ. Dep't Rep. 154 (1972)).

196. 73 Misc. 2d 783, 342 N.Y.S.2d 398 (Sup. Ct. 1973).

197. *Id.* at 787, 342 N.Y.S.2d at 403-04.

198. *Id.* at 788, 342 N.Y.S.2d at 404-05.

. . ."[199] By 1972 the transfer of this power had not yet been effected. Community School Board Number 2 brought an action to compel the Mayor of the City of New York, the director of the budget, the City Board of Education and the Chancellor to transfer power and authority over the school lunch program to the community boards and to allocate funds for the operation of the cafeteria services in the schools.[200] A reluctant court[201] held that the community board had stated a cause of action to compel the transfer, since the decentralization law had conferred upon the community boards "general operational authority"[202] over cafeteria services in city schools below the high school level within their districts. However, the question was mooted almost immediately by an amendment to the decentralization law,[203] which provided, *inter alia*, that "[s]uch utilization shall be subject to the approval of the [city] board of education."[204] Thus, the authority of the community boards in the operation of the cafeteria services is no more than managerial in nature.

The type of operational authority to be exercised by the community boards was suggested by *Valdivieso v. Community School Board No. 1*,[205] and *Parents Association, Public School 222 K v. Community School Board*,[206] both decided within a year following the effective date of section 2590-e.[207] The *Valdivieso* court held that a local school board was not required to consult with community groups before selecting a district superintendent.[208] At the same time, however, the court recognized that petitioners were entitled

199. N.Y. EDUC. LAW § 2590-e(7) (McKinney 1970), *as amended*, (McKinney Supp. 1976).

200. Community School Bd. No. 2 v. Lindsay, 71 Misc. 2d 85, 335 N.Y.S.2d 320 (Sup. Ct. 1972).

201. The court concluded that it was being involved, perhaps unnecessarily, in an issue best left for resolution by the administrative procedures of the State Education Department. *See* text accompanying note 186 *supra*.

202. 71 Misc. 2d at 86, 335 N.Y.S.2d at 321.

203. 1972 N.Y. Laws ch. 772, § 5.

204. 1972 N.Y. Laws ch. 772, § 5 (effective July 1, 1972), *amending* N.Y. EDUC. LAW § 2590-e(7) (McKinney 1970) (codified at N.Y. EDUC. LAW § 2590-e(7) (McKinney Supp. 1976)). The court's opinion in *Community School Bd. No. 2* was handed down on April 14, 1972.

205. 67 Misc. 2d 1007, 326 N.Y.S.2d 105 (Sup. Ct. 1970).

206. 66 Misc. 2d 21, 319 N.Y.S.2d 864 (Sup. Ct. 1971).

207. Under 1970 N.Y. Laws ch. 3, § 9, article 52-A took effect July 1, 1970. *Valdivieso* was decided November 2, 1970; *P.S. 222 K* was decided March 26, 1971.

208. 67 Misc. 2d at 1009, 326 N.Y.S.2d at 108. "It may be that the Legislature considered that the newly *elected* community boards should and could work out their own procedures, which this board apparently tried to do." *Id.*

to administrative review of the community board's action before the Chancellor.[209] In *Public School 222 K* the school's parents association sought a court order directing the community school board to remove an acting principal, allegedly appointed in violation of the Education Law. The court held: (1) that sections 2590-d and 2590-e(2) did not "specifically or inferentially command that the Community School Board consult with any other group [including a parents association] prior to appointing or assigning its employees";[210] and (2) that the judicial proceeding against the community board was premature where adequate administrative remedies had not been exhausted.[211] In both *Valdivieso* and *Public School 222 K,* the courts recognized both the primacy of authority of the community boards within their own districts in making specified decisions and the supervisory power of the City Board and its Chancellor to review such decisions in order to ensure that operations throughout the city district are consistent with its policies.[212]

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209. Apparently after the judicial proceedings in *Valdivieso* had been instituted, the petitioners—residents, and parents of children attending schools within School District One—sought a review of the Community Board's action by the Chancellor who refused to take jurisdiction while the court proceeding was pending. The court in *Valdivieso* dismissed the petition without prejudice to an administrative review as provided by sections 2590-g(10), and 2590-l of the Education Law.

210. 66 Misc. 2d at 24, 319 N.Y.S.2d at 867. Section 2590-d of the Education Law required the community board to establish a parents' association or parent-teachers' association in each school in the district, and to have "regular communication" with the associations so as to provide them "with full factual information pertaining to matters of pupil achievement." The court found that "the Legislature did not give parents' associations any other status or rights in the decentralized school system." *Id.* The court limited its holding to appointment of acting principals and refused to "speculate on the legal result . . . were the board to make a permanent or long-term appointment [without holding] prior consultations . . . in accordance with its own by-law." *Id.*

211. Petitioner had not exhausted its administrative remedies since section 2590-*l*(1) gave the Chancellor power to intervene, and section 2590-g(10) allows appeals to the city board and then to the Commissioner.

212. The ruling in *222 K* that "the Legislature did not give parents' associations any other status or rights in the decentralized school system" had been extended to hold that parents' associations and parent-teacher associations had no standing to challenge the validity of city-wide policy adopted by the City Board. New York City School Bds. Ass'n v. Board of Educ., 84 Misc. 2d 237, 239, 375 N.Y.S.2d 978, 983 (Sup. Ct. 1975), but the Appellate Division rejected that extension on appeal, 50 App. Div. 2d 826, 376 N.Y.S.2d 194, 196 (2d Dep't 1975), *aff'd,* 39 N.Y.2d 111, 347 N.E.2d 568, 383 N.Y.S.2d 208 (1976).

C. Policy Determination and Policy Implementation in the City District

The generally accepted principle, that the City Board is given the power and authority to determine city-wide policy and that the community boards are required to act consistently with those policies, establishes the framework within which the city school district must operate. But it does not answer the question of where policy determination ends and policy implementation begins. Moreover, it has been suggested that the City Board's policy-making power is limited by the decentralization law and that it should be subjected to the following criteria:[213]

> a) "Policy" must refer to broad statements of principles which apply system-wide, in contrast to detailed regulations concerning specific programs or decisions.
> b) Only those general powers of the community boards incorporated by reference in the introductory paragraph to N. Y. Ed. Law § 2590-e are explicitly made subject to the policy-making power of the City Board. Established canons of statutory interpretation hold that the specific must prevail over the general. Therefore, it should be presumed that other [sub]sections of the law which set forth in detail the specific powers of the community boards, the Chancellor, and the City Board (such as those concerning curriculum and budgetary matters) are complete in themselves and make unnecessary any reference to the general grant of city board policy-making power appearing elsewhere in the statute.
> c) Any "policies" to be imposed on community boards must be formally adopted after due consideration of views presented by interested parties at public meetings of the City Board.

The term "policy," when applied in the context of the Education Law, arguably refers to the general principles to be followed in the management of educational affairs; and standing alone, it may be argued that the City Board is limited by the terms of the enabling legislation to the pronouncement of broad educational goals and structural guidelines. However, the power of the City Board to "determine all policies of the city district"[214] does not stand alone. The City Board is also given "all the powers and duties the interim board of education . . . had on the effective date of [article 52-A]."[215]

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213. *See* Rebell, *supra* note 22, at 10, who adapts these criteria from the plaintiff's brief in Community School Bd. No. 3 v. Board of Educ., 66 Misc. 2d 739, 321 N.Y.S.2d 949 (Sup. Ct. 1971), *aff'd*, 38 App. Div. 2d 932, 330 N.Y.S.2d 167 (1st Dep't 1972).

214. N.Y. EDUC. LAW § 2590-g (McKinney 1970), *as amended*, (McKinney Supp. 1976).

215. *Id.*

The interim board of education was created to supervise the transition of the city school district into a community school district system and it retained all the section 2554 powers of the previous Board of Education of the city school district of the city of New York.[216] Section 2554 gives the Board of Education power (1) "[t]o prescribe such regulations and by-laws as may be necessary . . . for the general management, operation, control, maintenance and discipline of the schools. . . .";[217] and(2) to delegate "any of its administrative and ministerial powers to the superintendent of schools [now the Chancellor]. . . ."[218] In addition, when the City Chancellor assumed the powers and duties of his office under article 52-A, it was specifically provided that he would "exercise such powers and discharge such duties in a manner not inconsistent with the general policies formulated by, *and the specific determinations of,* the interim board within the scope of their authority."[219] Since the powers of the Chancellor included "those described in section twenty-five hundred fifty-four [of the Education Law], the exercise of which shall be in a manner not inconsistent with the policies of the city board,"[220] it is clear that the City Board was intended to be more than a supervisory agency: the powers of the Chancellor are concurrent with those of the City Board, but the Chancellor may not exercise those powers inconsistently with the City Board. Therefore, while the City Board is charged with the broad policy-making powers of section 2590-g, it does not exercise those powers to the exclusion of the specific powers given it as the successor to the interim board of education.

The second criterion suggested above, that the specific powers granted the community boards by section 2590-e are not subject to the general policy-making power of the City Board, is directly refuted by the preamble to that section.[221] After explicitly stating that all the powers and duties with respect to the control and operation of the schools under the jurisdiction of the community boards shall

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216. 1969 N.Y. Laws ch. 330, § 11, *as amended,* 1969 N.Y. Laws, ch. 442, § 4, *as amended,* 1970 N.Y. Laws ch. 3, § 8.

217. N.Y. EDUC. LAW § 2554(13)(a) (McKinney 1970).

218. *Id.* § 2554(13)(b). Paragraph (b) applies only "[i]n a city having a population of one million or more," of which New York City is the only one in New York State.

219. 1969 N.Y. Laws ch. 330, § 11 (emphasis added).

220. N.Y. EDUC. LAW § 2590-h(17) (McKinney 1970).

221. *Id.* § 2590-e (McKinney 1970), *as amended,* (McKinney Supp. 1976).

not be exercised inconsistently with the policies established by the City Board, the introductory paragraph of section 2590-e provides that this limitation shall in no way be affected by the enumeration of the specific community board powers of that section.[222]

Contrary to the inference of the third suggested criterion, City Board policies are not imposed on the community boards. The City Board has the power and the duty to "[h]old public hearings on any matter relating to the educational welfare of the city school district or other matters within the scope of its responsibilities whenever required to do so by law, or whenever in its judgment the public interest will be served."[223] Such public meetings are not a requirement for adoption of city-wide policy and are within the discretion of the City Board.[224]

The extent of the policy-making authority of the city school board was considered in *Community School Board No. 3 v. Board of Education.*[225] In that case, the community board sought to enjoin the City Board and its Chancellor from interfering with the determination of how federal Title I funds[226] should be used. The City Board argued that "the decentralization law gives the City School Board ultimate policymaking authority, even as to Title I funds."[227] The

222. *Id. Cf.* Reyes v. Community School Bd. No. 14, N.Y.L.J., June 24, 1971, at 14, col. 8. *Reyes* held that the adjustment of a teacher's probationary period by a community school board was ultra vires and that the grant of tenure to personnel who had less than the probationary period specified in the City Board's by-law was null and void. In its opinion the court suggested, but did not decide, that powers granted to the community boards by sections of the Education Law other than section 2590-e would not be subject to the over-all authority of the City Board. *But see,* New York City School Bds. Ass'n v. Board of Educ., 84 Misc. 2d 237, 245, 375 N.Y.S.2d 978, 986-87 (Sup. Ct. 1975), *modified,* 50 App. Div. 2d 826, 376 N.Y.S.2d 194 (2d Dep't 1975), *aff'd,* 39 N.Y.2d 111, 347 N.E.2d 568, 383 N.Y.S.2d 208 (1976).

223. N.Y. EDUC. LAW § 2590-g(4) (McKinney 1970).

224. The court in New York City School Bds. Ass'n v. Board of Educ., 84 Misc. 2d 237, 375 N.Y.S.2d 978 (Sup. Ct. 1975), could find no mandatory provision requiring the "Board of Education to conduct a public meeting prior to proclaiming a statement of educational policy; any contrary holding would be impracticable." *Id.* at 246, 375 N.Y.S.2d at 987.

225. 66 Misc. 2d 739, 321 N.Y.S.2d 949 (Sup. Ct. 1971), *aff'd,* 38 App. Div. 2d 932, 330 N.Y.S.2d 167 (1st Dep't 1972).

226. "Title I of the Elementary and Secondary Education Act of 1965 (U.S. Code, tit. 20 § 241a et seq.) provides for assistance to local educational agencies for the education of educationally deprived children of low-income families." 38 App. Div. 2d at 932, 330 N.Y.S.2d at 168 (McGivern, J., dissenting). Under the statute funds are released to the states by the federal government and transmitted to the "local educational agencies."

227. 66 Misc. 2d at 741, 321 N.Y.S.2d at 951. The community board argued that it had the right to determine how the funds should be used; the City Board maintained that it had

court rejected this argument, holding that under section 2590-i(14)(d) of the Education Law, the community board had been given "power by the state legislature to determine the use of Title I funds without review by the Chancellor or the City Board of the merits of particular proposals."[228] The court based its holding on a four-part analysis of section 2590-i(14)(d): (1) "[O]nly the Community School Board is given the right to submit proposals for the use of Title I funds";[229] (2) "The chancellor is given the right to review the proposals submitted to him 'as to form only' . . . and he must promptly transmit the proposals to the funding agency";[230] (3) The City Board is given no role in the review of the proposals;[231] (4) "[T]he language that 'community boards shall not be considered local educational agencies' . . . means [only] that an individual Community Board cannot, on its own, submit proposals to the funding agency."[232]

The court's holding that the City Board's overall policy-making authority did not extend to the merits of a community board's proposal for federal funding was upheld by the appellate division,[233] despite a vigorous dissent by Mr. Justice Owen McGivern in which he interpreted the statutory language of Section 2590-i as specifically prohibiting the Community Boards from qualifying as local educational agencies.[234] The court's decision in *Community School*

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the power to mandate that a portion of the funds be used for specific programs and that the community board could determine the use to which the remainder was to be put. *Id.* at 740, 321 N.Y.S.2d at 951.

228. *Id.* Section 2590-i(14)(d) provides in part:

> "[I]n the case of special [federal] funds allocated to the city district on a formula basis, [the community board may] submit proposals to the chancellor for a review as to form only and prompt transmittal to the funding agency; provided, however, that in the case of such special funds community boards shall not be considered local educational agencies; and provided further that the total amount of such proposals submitted by any community board shall not exceed the amount of an apportionment made by the chancellor on the basis of a formula determined by the city board . . . after consultation with community boards and the mayor. . . .

N.Y. EDUC. LAW § 2590-i(14)(d) (McKinney 1970).

229. 66 Misc. 2d at 741, 321 N.Y.S.2d at 951.

230. *Id.*, 321 N.Y.S.2d at 952.

231. *Id.*

232. *Id.* at 742, 321 N.Y.S.2d at 952.

233. 38 App. Div. 2d 932, 330 N.Y.S.2d 167 (1st Dep't 1972).

234. *Id.* at 933, 330 N.Y.S.2d at 169. "Thus, although local involvement in education is encouraged and fostered, the City Board remains paramount; and in respect of Federal funds, a community board is specifically debarred from ever exercising unfettered discretion as to their use and expenditure." *Id.*

Board No. 3 ignores the letter of the decentralization law in attempting to capture its spirit,[235] for as Justice Mr. McGivern said, "[despite] the laudable intent of stimulating local involvement . . . nevertheless both the State and Federal statutes envisage that the 'policy making powers' remain ultimate and intact in the overall City Board . . . in order to insure some uniformity of community practices and a more ready accountability."[236]

Thus, the City Board continues to serve as the "local educational agency" for the entire city school district. "It is given the right to draw up the formula by which [Title I] funds are apportioned to the different school districts in the city,"[237] using a formula which calculates the "citywide poverty index,"[238] and then distributing the funds to the individual districts.[239] The result is substantial control of the use of these federal funds by the City Board (the initial depository of the funds) as contemplated by both the state and federal legislation.[240]

D. The New York City School Boards Association Decisions

Recently, various individual community school boards, the New York City School Boards Association, parents associations from several community districts and individual parents of children attending schools in the city district have challenged the policy-making authority of the City Board and its Chancellor over the community districts in a series of cases in both the state and the federal courts.[241]

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235. The Elementary and Secondary Education Act was passed in 1965 and utilizes the term "local educational agencies" in establishing the funding procedure. The New York decentralization law was passed in 1969 and the section which deals specifically with federal funding in the nature of the 1965 federal legislation states, "in the case of such special funds community boards shall not be considered local educational agencies." N.Y. EDUC. LAW § 2590-i(14)(d) (McKinney 1970). The later state statute was phrased to exclude the community school boards from the earlier federal statute's ambit by specifically not considering them local educational agencies. *See id.* § 2590-i(14)(a).

236. 38 App. Div. 2d at 933, 330 N.Y.S.2d at 169.

237. 66 Misc. 2d at 741, 321 N.Y.S.2d at 952.

238. "Central board's rules cost Island schools Title I funds," STATEN ISLAND ADVANCE January 17, 1977, at 1, col. 1.

239. *Id.* "Before distributing allocated federal funds to the receiving district, the central board takes 4.4 per cent of the total off the top for administrative overhead." *Id.*

240. State Assemblyman Guy V. Molinari is proposing legislation which would designate decentralized school districts within the City of New York as their own "local educational agencies." *Id.*

241. New York City School Bds. Ass'n v. Board of Educ., 84 Misc. 2d 237, 375 N.Y.S.2d

In September 1975 the City Board had reached a compromise collective bargaining agreement with the teachers' union whereby it shortened the instructional day for pupils throughout the city district by two forty-five minute periods a week. Pursuant to this agreement the Chancellor issued a directive to all the community boards requiring compliance in every district. Some of the community boards sought to enjoin implementation of the Chancellor's directive, arguing that "instructional powers, including the length of the school day, are vested by law in the community school boards, and as such, they cannot be taken away from the community boards by other governmental agencies."[242] The court rejected this contention[243] holding: (1) "the policy decision with respect to the length of the school day is the proper function of the city board and not the prerogative of the community boards";[244] and (2) "under the statutory structure of the decentralization law, educational issues of city-wide import, as distinguished from strictly local questions, are to be determined by the city board."[245] After the appellate division modified and affirmed[246] the judgment petitioners appealed to the court of appeals.[247]

The issue before the court was the extent of the City Board's policy-making authority and its effect on the management and operation of schools under the jurisdiction of the community boards. The court concluded that the decentralization law created a situation where the respective authorities of the City Board and the community boards overlapped on key points, leading to conflicting

978 (Sup. Ct. 1975); *see also*, Zoll v. Anker, 414 F. Supp. 1024 (S.D.N.Y. 1976). For cases where the parents of school children have sought to enjoin the exercise of authority by community school boards, see Pride v. Community School Bd. No. 18, 482 F.2d 257 (2d Cir. 1973) and Pride v. Community School Bd. No. 18, 488 F.2d 321 (2d Cir. 1973).

242. 84 Misc. 2d at 243, 375 N.Y.S.2d at 984. "The Community School Boards contend that under decentralization they were entrusted with broad, general powers over the everyday workings of the schools under their charge, including the power [to determine the length of the school day]." *Id.* at 243-44, 375 N.Y.S.2d at 985.

243. *Id.* at 244, 375 N.Y.S.2d at 985.

244. *Id.* at 243, 375 N.Y.S.2d at 985.

245. *Id.* at 244, 375 N.Y.S.2d at 985.

246. 50 App. Div. 2d 826, 376 N.Y.S.2d 194 (2d Dep't 1975). "While it is generally within the power of State education officials to fix mandatory minimum hours of daily instructional time, in the absence of the exercise of that power by such officials, the Central Board of Education of the City of New York may determine the number of hours of instructional time to be provided in that city's public schools." *Id.* at 827, 376 N.Y.S.2d at 196.

247. 39 N.Y.2d 111, 383 N.Y.S.2d 208, 347 N.E.2d 568 (1976).

interpretations of where the power lay.[248] However, the issue turned on a determination of whether the statutory principle of decentralization contemplated the extension of the authority of the City Board beyond the prescription of minimum standards to the establishment of specific policy.[249]

The court determined that the City Board and its Chancellor have the responsibility for establishing policy having city-wide impact, and that the general power of the community boards to manage and control the schools of their districts is limited to matters relating to their districts alone and must be exercised consistently with the policies established by the City Board.[250]

Based on that determination the court held that absent state regulation or restriction, the City Board of Education has the power to establish a uniform city-wide policy or standard with respect to the hours of instruction in the public schools.[251]

The court recognized that the authority of the City Board to establish city-wide policy was subject to "minimum educational standards mandated by a higher authority [i.e., the Board of Regents or the State Commissioner of Education]."[252] Absent the promulgation of such standards, the State Education Department had not preempted the field and the City Board could not be prohibited from reducing the hours of instruction, as a function of its exercise of the educational policy-making authority vested in it by statute.[253]

Six days after the court of appeals' decision, the Community School Board of District Number 3 directed the schools in its district to remain open for the full school day. After unsuccessful

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248. *Id.* at 117, 383 N.Y.S.2d at 211, 347 N.E.2d at 572.

249. *Id.* at 120, 383 N.Y.S.2d at 213, 347 N.E.2d at 574.

250. *Id.* at 119-20, 383 N.Y.S.2d at 213, 347 N.E.2d at 573-74. The court noted that "[t]he ultimate general management and control of educational affairs in the State is vested in the Board of Regents and Commissioner of Education." *Id.* at 116, 383 N.Y.S.2d at 211, 347 N.E.2d at 571.

251. *Id.* at 115, 383 N.Y.S.2d at 210-11, 347 N.E.2d at 571.

252. *Id.* at 122, 383 N.Y.S.2d at 214, 347 N.E.2d at 575. This theory was espoused by the appellate division. *See* note 246 *supra*.

253. The court noted that, as of the date of its decision, the State Education Department had not exercised its power to prescribe a minimum number of instructional hours per day or per week, although on September 1, 1976, the State Education Commissioner's regulations concerning minimum hours of instruction would go into effect. "[U]ntil that time, the board appears to have been free, within the limits of whatever mandated minimum educational standards now exist, to bargain over the number of hours of instruction." *Id.* at 122, 383 N.Y.S.2d at 214-15, 347 N.E.2d at 575.

reconciliation attempts, the Chancellor exercised his authority under section 2590-*l* of the Education Law to supersede the community board and appoint a trustee to comply with the directive of the City Board.[254] This led to a protest demonstration by the parents in District 3 in an attempt to prevent enforcement of the directive.[255] At the same time the parents of children attending Public School Number 75 in District Number 3 commenced an action in federal district court alleging violation of due process and a denial of equal protection.[256] The court rejected the constitutional arguments and accepted the state court decision as *res judicata* in denying a preliminary injunction.[257] The court concluded, "It is the City Board that is vested with power to determine city wide educational policy applicable to all local boards. . . . While parents may disagree and sincerely challenge the wisdom of the policy decisions, the responsibility was that of the City Board."[258]

E. Summary

The courts of New York State have been grappling with the concept of decentralization since before the city school district was restructured by article 52-A. However, in both the series of decisions arising from the Ocean Hill-Brownsville demonstration project in 1968-69, and in the Community School Board of District Number 3 decisions in 1975-76, the courts have been in basic agreement in interpreting the intent of the decentralization law. In the management and control of the city's schools, the City Board of Education shall determine all policies of the city district.

V. Conclusion

The New York City School Decentralization Law has been criticized as a "patchwork and highly ambiguous law."[259]

Often the legislation grants the same power to both the City Board (and its Chancellor) and the community boards.[260] However,

254. *See* text accompanying notes 132-33 *supra*.
255. 414 F. Supp. 1024, 1026 (S.D.N.Y. 1976).
256. *Id.* at 1025.
257. *Id.* at 1027.
258. *Id.* at 1029.
259. Rebell, *supra* note 22, at 1.
260. For example, the introductory paragraph of section 2590-e of the Education Law provides that "[e]ach community board shall have all the powers and duties, vested by law

the delegation of power is subject to the principle which apparently makes the City Board the repository of overall educational authority in the city. Section 2590-g of the Education Law provides that it shall be the prerogative of the City Board to determine the policies of the city district; section 2590-h directs the Chancellor to exercise the powers enumerated in that section in a manner not inconsistent with the policies of the City Board; section 2590-e defines the powers and duties of the community school district boards and provides that their powers shall be exercised in a manner consistent with the policies of the City Board.[261] Thus, although the statutory language grants powers which overlap, the primary authority rests in the City Board.[262]

The community boards are given management and control only of the schools under their jurisdiction. This power is coextensive with that of the City Board when it is exercised consistently with that Board's policies. But when the policies diverge, the independence of community board authority ends, and the general management of the schools by the community school boards is subordinated to the overall statutory authority of the City Board. The dissenting opinion of Mr. Justice McGivern in *Community School Board No. 3 v. Board of Education,*[263] although dealing with the use of federal funds, is also applicable to the role of the decentralization law in the New York City School District. He stated:[264]

> The wisdom of this legislative scheme and design is apparent. Otherwise, we could have 31 different and independent satrapies, all competing for limited funds and yet operating without let or hindrance, resulting in a crazy-quilt of variegated and unsupervised practices, no matter how innovative, experimental, untried or bizarre. . . . Thus, although I recognize the laudable intent of stimulating local involvement . . . nevertheless [the statute envisages] that the 'policy making powers' remain ultimate and intact in the over-

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in, or duly delegated to, the local school board districts and the board of education of the city district [with respect to the specified schools]." N.Y. EDUC. LAW § 2590-e (McKinney Supp. 1976). At the same time, section 2590-h (17) provides that the chancellor shall "[p]ossess those [powers] described in section twenty-five hundred fifty-four [which prescribes the powers and duties of the city board of education]." *Id.* § 2590-h(17) (McKinney 1970).

261. *In re* Parents Ass'n of J.H.S. No. 278, 13 [N.Y.] Educ. Dep't Rep. 249, 249-50 (1974).

262. New York City School Bds. Ass'n v. Board of Educ., 39 N.Y.2d 111, 117, 347 N.E.2d 568, 572, 383 N.Y.S.2d 208, 211 (1976).

263. 38 App. Div. 2d 932, 330 N.Y.S.2d 167 (1st Dep't 1972).

264. *Id.* at 933, 330 N.Y.S.2d at 169 (McGivern, J., dissenting).

> all City Board . . . in order to ensure some uniformity of community practices . . . .

The extent of the *administrative* powers[265] delegated to the community boards under the decentralization law has rarely been challenged in court. The Chancellor's powers which involve him in the supervision and control of the community boards are the subject of the most heated litigation. The courts have noted that the major elements of the continuing controversy between the community boards and the City Board are power and money,[266] and they are quick to criticize when the power struggle detracts from the responsibility of the educational system to provide for the educational welfare of the children.[267]

Long before the establishment of the New York City decentralized school system, it had been recognized that the Education Law was intended to impose upon a board of education only general duties connected with setting up and maintaining an education system in the city.[268] Accordingly, it was not intended that the board assume the direct responsibility of enforcing rules, reaching down into each classroom of the school system to provide in detail for the type of activities and qualifications of individual teachers and administrators.[269]

School districts have only such powers as are delegated by the Legislature.[270] In article 52-A the Legislature delegated to the community school boards all the powers and duties previously vested in "the local school board districts and the board of education of the city district"[271] for the control and management of the schools under

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265. *See* text accompanying notes 143-48 *supra*.

266. Council of Sup'rs & Adm'rs v. Board of Educ., 73 Misc. 2d 783, 784, 342 N.Y.S.2d 398, 400, (Sup. Ct. 1973), *aff'd*, 35 N.Y.2d 861, 322 N.E.2d 273, 363 N.Y.S.2d 581 (1974).

267. New York City School Bds. Ass'n v. Board of Educ., 39 N.Y.2d 111, 122, 347 N.E.2d 568, 575, 383 N.Y.S.2d 208, 215 (1976). "In all of this imbroglio, and those which may follow, the primary concern should be the students, and not the . . . parties to the power or ideological struggle between public entities created by overlapping statutes performing parallel fiduciary responsibilities." *Id.*

268. Luce v. Board of Educ., 2 App.Div. 2d 502, 505, 157 N.Y.S.2d 123, 127 (3d Dep't 1956), *aff'd*, 3 N.Y.2d 792, 143 N.E.2d 797, 164 N.Y.S.2d 43 (1957). These general duties related to properties, policies, general course of study, and employment of qualified and competent persons. 2 App. Div. 2d at 505, 157 N.Y.S.2d at 127.

269. 2 App. Div. 2d at 505, 157 N.Y.S.2d at 127.

270. Cook v. Griffin, 47 App. Div. 2d 23, 26, 364 N.Y.S.2d 632, 636 (4th Dep't 1975).

271. N.Y. EDUC. LAW § 2590-e (McKinney 1970), *as amended*, (McKinney Supp. 1976).

their jurisdiction. But "[w]hether this blanket transmission of power means what it says is open to question."[272] After the recent extension of the authority of the City Board to establish specific requirements within all community districts[273] rather than a prescription of minimum standards for the entire district, it is difficult to imagine many matters which cannot be encompassed by the broad umbrella of "city-wide policy." If the City Board can show that a particular action by a community board—even the hiring of a particular individual—carries some city-wide import, then it may impose its determination, preempting the community board. Any conflict between the City Board and a community board which involves a question of proper administration of the educational system throughout the city school district of the city of New York would necessarily have to be resolved in favor of the New York City Board of Education.

Kenneth R. McGrail

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272. Community School Bd. No. 3 v. Board of Educ., 68 Misc. 2d 826, 830, 328 N.Y.S.2d 535, 539 (Sup. Ct. 1972).

273. *See* notes 241-58 *supra* and accompanying text.