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Framework for Understanding the Legal Structure of Texas Public Schools

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“Politics is a fact of life in all organizations, and schools are no exception” (Ramsey, 2006, p. 79). By their very nature, public schools cannot help but have a strong political dimension. Schools operate under a legal structure where policy is adopted by the school board whose membership is elected by the registered voters residing within the school district boundaries. The development of school district policies and associated decisions therein are largely impacted by federal and state laws. Those in power in the executive, legislative, and judicial branches of federal and state governments were either elected to their respective positions by the general voting public or appointed by elected officials. Many of their actions ranging from the drafting and enactment of bills into law to decisions rendered through judicial processes, affect school district policies, either directly or indirectly, and consequently have an impact on the structure and operation of Texas public schools.

Ramsey (2006) said, “Wherever there are leaders and followers, there is politics” (p. 79). Elected and appointed officials at the federal, state, and local levels pass laws and adopt policies shaping the legal structure and thus impacting the behaviors and actions of the roughly 4.8 million students and 660,000 faculty and staff in Texas public schools (TEA, 2010). In accordance with Ramsey’s (2006) observation, the presence of politics is glaringly obvious.

Problem

Texas public school stakeholders consist primarily of students, parents, faculty and staff, administrators, school board members, business leaders, community members, and taxpayers. While each of these stakeholders has a vested interest in the local school district, many fail to understand how public schools came into existence and the legal rationale upon which they operate. The problem lies in the structural complexity of schools, which is prohibitive to a complete understanding by its entire constituency. While the multiple layers of politics and numerous laws and policies that define the Texas public school structure may be necessary for proper operation, the intricacy further exacerbates the ability of many to fully comprehend it. The purpose of this study was to create a framework for understanding the legal structure of Texas public schools to facilitate a more complete understanding by all constituents.

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Legal Perspective

The framework developed in this study examined the Texas public school structure from a legal perspective. The legal perspective is grounded in the sources of law, which were ultimately used as variables for analysis. Sources of law may be viewed categorically as constitutional, statutory, administrative, and judicial law (Walsh, Kemmerer, & Maniotis, 2005). Moreover, these four sources of law exist at the federal and state levels with the addition of administrative law which is also found at the local level (Hoyle, Bjork, Collier, & Glass, 2005; Walsh, Kemmerer, & Maniotis, 2005).

The first source of law referenced in this study is constitutional law and it exists at both the federal and state levels. Constitutional law is derived from the Constitution of the United States and, in this Texas specific study, the Texas Constitution of 1876. For purposes of hierarchical layering, constitutional law trumps all other sources of law and state constitutional law is subordinate to federal constitutional law.

By definition, “a statute is a law enacted by a legislative body” (Walsh, Kemmerer, & Maniotis, 2005, p. 2), and statutory law is the second source of law in this study. With respect to statutory law, the legislative bodies of interest in this study are the U.S. Congress and the Texas Legislature. Statutory law is the product of the actions of the U.S. Congress and the Texas Legislature in passing bills into law at the federal and state levels respectively.

The third source, administrative law, “consists of the rules, regulations, and decisions that are issued by administrative bodies to implement state and federal statutory laws” (Walsh, Kemmerer, & Maniotis, 2005, p. 3). Those administrative bodies are present at the federal, state, and local levels. Examples of these administrative bodies include, at the federal level, the United States Department of Education; at the state level, the State Board of Education (SBOE), the Texas Education Agency (TEA), and the Texas Commissioner of Education; and at the local level, the Board of Trustees of a school district.

Judicial law serves as the final source of law in this study. Judicial law develops from decisions yielded by state and federal courts. As a result of disputes arising under constitutions, statutes, and administrative laws, the courts have the final say. Decisions handed down from the judicial system sometimes have associated school district policy implications (Walsh, Kemmerer, & Maniotis, 2005).

Review of Literature

With this study purporting to analyze the legal structure of Texas public schools, the appropriate focus of the literature review is on their legal and structural aspects. Given that Texas public schools are governmental agencies directed by elected officials (Vornberg & Harris, 2010) adopting policies in response to state and federal laws enacted

by elected members of the U.S. Congress and Texas Legislature, the political aspects must be intermingled into the discussion. Alexander and Alexander (2009) eloquently said,

Because a public school is a governmental agency, its conduct is circumscribed by precedents of public administrative law supplemented by those legal and historical traditions surrounding an educational organization that is state established, yet locally administered. In this setting, legal and educational structural issues that define the powers to operate, control, and manage the schools must be considered. (pp. 1-2)

The fundamental principles of legal control for the establishment and structure of Texas public schools are prescribed by the constitutional system from which the basic organic law emanates: the U.S. Constitution of 1787 and the Texas Constitution of 1876 (Alexander & Alexander, 2009; Walsh, Kemerer, & Maniotis, 2005). “Constitutions at both levels of government are basic because the positive power to create public educational systems is assumed by state constitutions, and provisions of both the state and federal constitutions serve as restraints to protect the people from the unwarranted denial of basic constitutional rights and freedoms” (Alexander & Alexander, 2009, p. 2).

The power of operation of the public educational system, therefore, originates with a constitutional delegation to the legislature to provide for a system of education. With legislative enactments providing the basis for public school law, it then becomes the role of the courts, through litigation, to interpret the will of the legislature. (Alexander & Alexander, 2009, p. 2)

Thus, the combination of constitutions, statutes, administrative law, and judicial law forms the primary legal foundation upon which the public schools are based (Alexander and Alexander, 2009; Walsh, Kemerer, & Maniotis, 2005).

“In legal theory, public schools exist not only to confer benefits on the individual but also, just as importantly, to advance civil society, for which they are necessary, indeed essential” (Alexander & Alexander, 2009, p. 27). This explains the extensive involvement of all levels of government in developing, implementing, and enforcing laws, policies, rules, and regulations that shape the Texas public school structure. “During the 1760s and 1770s, the idea developed that there should be a free system of education that would provide for a general diffusion of knowledge, cultivate new learning, and nurture the democratic ideals of government” (Alexander & Alexander, 2009, p. 23). Following the long struggle for public schools in the nineteenth century, “it became clear that the states must require rather than permit localities to establish free schools. Local control of education gradually became limited by state constitutions and by actions of state legislatures.” (Alexander & Alexander, 2009, p. 27).

Today, Texas public school districts may be viewed as extensions of state government. Whereas the U.S. Constitution, through the Tenth Amendment, reserves education as a state function, the Texas Constitution authorizes the Legislature to enact a system of public education. As such, the state of Texas has assumed the responsibility for the structure and operation of the public school system to ensure the education of all students in the state (Walsh, Kemerer, & Maniotis, 2005). This results in extensive federal, state, and local political processes impacting the structure of Texas public schools through a legal avenue.

Method

Considering the historical nature of the laws that have shaped the structure of Texas public schools, i.e., the U.S. Constitution of 1787 (U.S. Const.) and the Texas Constitution of 1876 (Tex. Const.), the historic research methodology was employed. “Historical research helps educators understand the present condition of education by shedding light on the past” (Gall, Borg, & Gall, 1996, p. 643). More specifically, quantitative methods of content analysis were used in the data collection process because it is “a research technique for the objective, systematic, and quantitative description of the manifest content of communication” (Berelson, 1952, p. 18).

The primary data for this study were legal documents and administrative agency literature and materials that were directly related to the structure of Texas public schools. These documents included the Constitutions of the United States and Texas; statutory laws related to education as codified in the United States Code and the Texas Education Code; administrative laws as reflected in such documents as Attorney General opinions, rules and regulations of the United States Department of Education as outlined in documents such as the Elementary and Secondary Education Act and No Child Left Behind policies, Texas education rules as compiled in the Texas Administrative Code, and school district policies as assembled in the Texas Association of School Boards (TASB) Policy On-Line structure. While the document review was not exhaustive, in terms of compiling all laws related to the Texas public school structure, it served as an overall comprehensive review of the major levels of legal authority as categorized by the four major sources of law.

The data organizational scheme was both categorical and hierarchical. The categorical organization separated the findings into the four sources of law—constitutional, statutory, administrative, and judicial. The hierarchical organization distributed the four categories of legal findings into the federal, state, and local levels of authority. The desired outcome was a display of data in columns by sources of law and in rows by levels of authority. This resulted in a table to serve as a framework for understanding the structure of Texas public schools from a legal perspective.

Results

Through detailed narrative description, the findings revealed the federal, state, and local levels of the Texas public school structure as categorized by the four identified sources of law. The narrative descriptions ultimately led to the development of a table for a concise presentation of the findings in an easily understandable format.

Constitutional Law

Constitutional law, as it relates to the structure of Texas public schools, originates from two sources, those being the U.S. Constitution and the Texas Constitution. Both Constitutions are documents of delegated powers which are responsible for laying the legal foundation upon which the structure of Texas public schools was built.

U.S. Constitution. The U.S. Constitution is organized into seven Articles and twenty-seven Amendments. Although education is not specifically mentioned anywhere in the U.S. Constitution, the authority for public schools across the nation is rooted in the plenary power granted in the Tenth Amendment. The Tenth Amendment states, “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people” (U.S. Const. amend.10). The education literature is replete with references verifying that the Tenth Amendment is the foundational legal basis for the nation’s current structure of education (Alexander & Alexander, 2009; Barron Ausbrooks, 2010a; Brimley & Garfield, 2008; Walsh, Kemerer, & Maniotis, 2005).

Texas Constitution. The Tenth Amendment of the U.S. Constitution granted the power over schools to the state governments (Walsh, Kemerer, & Maniotis, 2005). “Acting under the interpretation of the Tenth Amendment, all of the states through their constitutions have taken on education as a state function” (Barron Ausbrooks, 2008, p. 5). The Texas Constitution is organized into seventeen Articles with Article 7 pertaining directly to education. Article 7 of the Texas Constitution is further divided into twenty sections (Tex. Const., art. 7). The legal basis for the current structure of Texas public schools may be found in Article VII, § 1 of the Texas Constitution of 1876, which reads,

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provisions for the support and maintenance of an efficient system of public free schools. (Tex. Const., art. 7, § 1)

Thus, the U.S. Constitution, through the Tenth Amendment, reserves education as a state function and in turn, the Texas Constitution authorized the state Legislature to enact a system of public education.

Statutory Law

“The public schools of the United States are governed by statutes enacted by state legislatures. The schools have no inherent powers, and the authority to operate them must be found in either the express or implied terms of statutes” (Alexander & Alexander, 2009, p. 3). Statutory law, otherwise known as legislative law (Barron Ausbrooks, 2010a), as it applies to the structure of Texas public schools, may be found at both the federal and state levels.

Statutes, in our American form of government, are the most viable and effective means of making new law or changing old law. Statutes enacted at the state or federal level may either follow custom or forge ahead and establish new laws that shape the future. (Alexander & Alexander, 2009, p. 2)

Federal statute. Federal statutory laws are enacted by the U.S. Congress. The Congressional Record contains the full text of federal statutes, which are codified and published in the United States Code (Barron Ausbrooks, 2010b). “The Congressional Record is the official record of the proceedings and debates of the United States Congress and is published daily when Congress is in session” (GPO Access, 2010a).

The United States Code is the codification by subject matter of the general and permanent laws of the United States based on what is printed in the Statutes at Large. The United States Code (USC) is divided by broad subjects into 50 titles and published by the Office of the Law Revision Counsel of the U.S. House of Representatives. (GPO Access, 2010c)

Title 20 of the USC contains all of the education-related federal statutes. As of February 1, 2010, Title 20 contained 78 chapters beginning with § 1 and ending with § 9882 (Cornell University Law School, 2010).

State statute. “The Texas Legislature, acting pursuant to the Tenth Amendment to the U.S. Constitution and Article VII of the Texas Constitution, is responsible for the structure and operation of the Texas public system” (Walsh, Kemerer, & Maniotis, 2005, p. 13). In fact, Walsh, Kemerer, & Maniotis (2005) went so far as to say that the Legislature is the “biggest player in Texas education” (p. 13).

Most of the state statutory laws directly relating to education, passed by the Texas Legislature, are codified in the Texas Education Code (TEC). Walsh, Kemerer, & Maniotis (2005) said, “The Code is an important source of law because it applies to the daily operation of schools, detailing the responsibilities and duties of the State Board of Education (SBOE), the Texas Education Agency (TEA), and school boards, charter schools, and school personnel” (p. 4).

The Texas Education Code is comprised of six titles and nine subtitles. Title 1 contains the general provisions of the code that apply to all educational institutions receiving state tax funds. Public education is addressed in Title 2, followed by higher education in Title 3. The focus of Title 4 is on educational compacts. Title 5 is reserved for “other education,” which, as of the date of this study, pertained to driver and traffic safety education. Lastly, Title 6 centers on benefits consortiums for certain private educational institutions (TEC §§ 1.001 – 2000.004).

Specific to the state-level statutory legal structure under which Texas public schools operate is Title 2 of the Texas Education Code, titled “Public Education.” Title 2 is divided into subtitles A through I that contain §§ 4 - 46. The major topics of the subtitles are (a) General Provisions, (b) State and Regional Organization and Governance, (c) Local Organization and Governance, (d) Educators and School District Employees and Volunteers, (e) Students and Parents, (f) Curriculum, Programs, and Services, (g) Safe Schools, (h) Public School System Accountability, and (i) School Finance and Fiscal Management.

Administrative Law

Administrative law, sometimes coined executive law (Barron Ausbrooks, 2010a), consists of the rules, regulations, procedures, guidelines, and decisions, developed and issued by government agencies and associated administrative bodies to implement federal and state statutory laws as well as the rules and regulations that federal, state, and local agencies establish to carry out their responsibilities. The regulations designed by the implementing agencies applying laws to the realities of day-to-day schooling are typically quite detailed to the point that their length often exceeds that of the statute itself (Walsh, Kemerer, & Maniotis, 2005). Administrative law is present at the federal, state, and local levels.

Administrative law in the Texas education structure assumes both quasi-legislative and quasi-judicial roles. The Texas Commissioner of Education and the State Board of Education enact state-level rules that are codified in the Texas Administrative Code, thus operating in a quasi-legislative capacity. Similarly, boards of education for local school districts adopt policies, as authorized in state statute, representing the law of the school district. To exhaust all remedies before going to court, local school districts have policies and procedures in place for administrators and the school board to hear grievances from complainants. Likewise, procedures are in place for appeals to be heard by the Commissioner of Education. These local- and state-level hearing processes serve as examples of the quasi-judicial character assumed by administrative law (Walsh, Kemerer, & Maniotis, 2005).

Federal administrative law. Education-related federal administrative law may be found in the form of presidential proclamations and executive orders, U.S. Attorney General opinions, and federal-level regulatory agency policies, rules, and regulations. While the actions of various federal agencies may impact education, the largest player in this arena is logically the U.S. Department of Education. Short descriptions of these three major administrative law making bodies follow.

At the upper-most level of the executive branch of the federal government, the President of the United States is granted the authority and responsibility for developing rules, regulations, guidelines, procedures, etc., for implementing federally sponsored and financed programs. Furthermore, the President is authorized to issue proclamations and executive orders to gain compliance with the U.S. Constitution and federal laws. Presidential proclamations and executive orders are documented in the Federal Register (Barron Ausbrooks, 2010a) and accessible at the Presidential Actions Briefing Room online at <http://www.whitehouse.gov/briefing-room/presidential-actions>.

Pursuant to the Judiciary Act of 1789, the U.S. Attorney General renders opinions on questions of law at the request of the President and the heads of Executive Branch departments (USDOJ, 2010). Moreover, the U.S. Attorney General functions as a legal adviser to the President and delegates to the Office of Legal Counsel the responsibility of reviewing all executive orders and proclamations issued by the President (USDOJ, 2010). While presidential proclamations and executive orders and U.S. Attorney General opinions may not usually directly address education, the potential is always present, thus warranting attention as presented in this section of the study.

“The U.S. Department of Education is a cabinet-level agency of the federal government that establishes policy for, administers, and coordinates many of the educational programs created and funded by Congress” (Barron Ausbrooks, 2010a, p. 9). The U.S. Department of Education

assists the President in executing national policies and implementing laws enacted by Congress. The officials of the Department of Education also have the authority and responsibility, as do the officials of other cabinets and agencies of the federal government, for drafting regulations, guidelines, and procedures to implement federal laws that create and fund federal programs. Once drafted, the regulations are submitted to the appropriate congressional committees for approval and are then published in the Federal Register. They are eventually inserted into the Federal Administrative Code and carry the weight of administrative law. (Ausbrooks, 2010b, p. 102)

The U.S. Department of Education is led by the Education Secretary who is advised by multiple offices hierarchically placed beneath the Office of the Secretary. The

organizational structure of the U.S. Department of Education displayed at <http://www2.ed.gov/about/offices/or/index.html>. Codified U.S. Department of Education policies, rules, and guidelines are located in the Code of Federal Regulations (GPO Access, 2010b) and are posted the Department of Education website at <http://www2.ed.gov/policy/landing.html>.

State administrative law. Education-related state administrative law may be found in the form of governor's proclamations and executive orders, Texas Attorney General opinions, and state-level regulatory agency policies, rules, and regulations. Major state-level boards, agencies, and individuals include the State Board of Education, the Texas Education Agency, and the Texas Commissioner of Education. Descriptions of these major administrative law making bodies follow.

In a similar fashion to the powers of the President at the federal level, the Texas governor is authorized to issue proclamations and executive orders (Barron Ausbrooks, 2010a), some of which can and do directly affect education. These proclamations and executive orders are recorded in the Texas Register (Tex. Reg., 2010) and are accessible for viewing on the Texas Governor's website at <http://governor.state.tx.us/news/>.

The Texas Attorney General renders legal opinions that sometimes impact education in the state, and is another source of state-level administrative law.

State agencies or their officials can request an attorney general's advisory opinion whenever they are confronted with novel or unusually difficult legal questions. Although the attorney general's opinions are not legally binding either on the governmental officials, agencies requesting them, or on the courts, they carry a great deal of influence, especially in those situations in which there is no authoritative interpretation or decision by the courts. (Barron Ausbrooks, 2010a, p. 11)

As extensions of the state, school districts "may request the assistance of the attorney general on any legal matter" (TEC § 11.151(e)). In requesting such opinions, requesters do so knowing that "an Attorney General Opinion is a written interpretation of existing law" (Attorney General, 2010). Moreover,

Attorney General Opinions clarify the meaning of existing laws. They do not address matters of fact, and they are neither legislative nor judicial in nature. That is to say, they cannot create new provisions in the law or correct unintended, undesirable effects of the law. Opinions interpret legal issues that are ambiguous, obscure, or otherwise unclear. Attorney General Opinions do not reflect the AG's opinion in the ordinary sense of expressing his personal views. Nor does he in any way "rule" on what the law should say.

Unless or until an opinion is modified or overruled by statute, judicial decision, or subsequent Attorney General Opinion, an Attorney General Opinion is presumed to correctly state the law. Accordingly, courts have stated that Attorney General Opinions are highly persuasive and are entitled to great weight. Ultimate determination of a law's applicability, meaning or constitutionality is left to the courts. (Attorney General, 2010)

Texas Attorney General Opinions are recorded in the Texas Register (Tex. Reg., 2010) and are accessible for viewing on the Texas Attorney General's website at <https://www.oag.state.tx.us/opin/>.

The State Board of Education (SBOE) is an elected body of fifteen members (TEC § 7.101(a)) who perform school district- or regional education service center-related duties as assigned by the Texas Constitution or the Legislature (TEC § 7.102(a)). Prior to 1995, the SBOE was the policy-making body of the TEA, however, the Texas Legislature separated them from the TEA at that time and reduced their role in the state's public education system (Walsh, Kemerer, & Maniotis, 2005). Nonetheless, the SBOE remains a powerful entity in the state's education structure engaging in administrative law processes. Statutorily, the SBOE is assigned a list of thirty-four specific powers and duties to be carried out with the advice and assistance of the Texas Commissioner of Education (TEC § 7.102(b-c)). Actions of the SBOE are recorded in the Texas Register and rules and adoptions are codified in the Texas Administrative Code.

The Texas Education Agency (TEA) is comprised of the Commissioner of Education and agency staff (TEC § 7.002(a)).

This hierarchical administrative governmental structure is authorized to implement, administer, and regulate the state-mandated educational function in the local school districts of the state. An important part of its responsibility is to make rules and regulations governing education in the state, which are compiled in the official state publication, Title 19 Education, Texas Administrative Code. (Barron Ausbrooks, 2010a, p. 23)

Statutorily, the TEA is assigned a list of fourteen specific educational functions (TEC § 7.021(b)). Additionally, the TEA is authorized to enter into agreements with federal agencies regarding such activities as school lunches and school construction (TEC § 7.021(c)), and the TEA administers the capital investment fund (TEC § 7.024). Adopted rules of the TEA are codified in the Texas Administrative Code.

The Texas Commissioner of Education is appointed, and may be removed, by the governor with the advice and consent of the Texas Senate (TEC §§ 7.051, 7.053). The commissioner, whose only statutory qualification for office is to be a U.S. citizen (TEC §

7.054), serves a four year term commensurate with the governor (TEC § 7.052) as the educational leader of the state (TEC § 7.055(b)(1)). Additionally, the commissioner serves as executive officer of the agency and executive secretary of the SBOE (TEC § 7.055(b)(2)). Touted as the most powerful state-level player other than the Texas Legislature (Walsh, Kemerer, & Maniotis, 2005), the commissioner has forty-one powers and duties assigned in state statute (TEC § 7.055). Other sections of the code assign additional duties with regard to accountability and low-performing schools (TEC §§ 39.151-39.152).

When authorized to develop and implement rules, which is a quasi-legislative function of administrative law, the Commissioner of Education engages in such activity and those rules governing Texas education are recorded in the Texas Register and codified in the Texas Administrative Code. As a quasi-judicial act, the Commissioner of Education renders decisions to appeals in accordance with provisions outlined in TEC §7.057 that become administrative law. These decisions are catalogued and searchable by docket number, petitioner, and respondent or hearing officer on the TEA website at <http://ritter.tea.state.tx.us/commissioner/>.

Local administrative law. The governmental unit at the local school district level is the elected board of trustees. School districts function as legal extensions of the state, thus making them quasi-municipal corporations, and “their boards of trustees are considered state officials with specific administrative duties, responsibilities, and functions mandated by law” (Barron Ausbrooks, 2010a, p. 23). While many of the policies adopted by local school boards may be in direct response to actions of the legislature, judicial law decisions, etc., the desire of the Texas Legislature was for the school board to maintain a level of power, as is revealed in the language used in TEC §7.003, which states, “An educational function not specifically delegated to the agency or the board [SBOE] under this code is reserved to and shall be performed by school districts or open enrollment charter schools.”

Although school board members have no power as individuals, as a body corporate, convened in a legally called meeting, their power, under the auspices of administrative law, is quite evident. TEC §11.151(b) states:

The trustees as a body corporate have the exclusive power and duty to govern and oversee the management of the public schools of the district. All powers and duties not specifically delegated by statute to the agency or to the State Board of Education are reserved for the trustees, and the agency may not substitute its judgment for the lawful exercise of those powers and duties by the trustees.

In general, in the name of the school district, the board of trustees, as a body corporate, may “acquire and hold real and personal property, sue and be sued, and receive bequests

and donations or other moneys or funds coming legally into their hands” TEC §11.151(a). Specific powers and duties of boards of trustees of independent school districts are listed in TEC §11.1511(b) by way of a list of fifteen items of what the board shall do, and in TEC §11.1511(c) by way of a list of four items of what the board may do.

Regarding the administrative law function of school boards, Walsh, Kemerer, and Maniotis (2005) said, “The policy manuals and handbooks developed by local school districts are excellent close-to-home examples of administrative law” (p. 4). Furthermore, TEC §11.151(d) states, “The trustees may adopt rules and bylaws necessary to carry out the [their] powers and duties”—an obvious administrative law capacity.

The school district administrators are responsible for implementing the policies adopted by the board of trustees. Ausbrooks (2010a) said, “the district superintendent and campus principals function as extensions of the local school board through the general duties and authority granted to them through TEC §11.201 and §11.202” (p. 23).

“The superintendent is the educational leader and the chief executive officer of the school district” (TEC §11.201(a)) with a list of fifteen statutorily assigned duties outlined in TEC §11.201(d). “The school principal is the frontline administrator, with statutory responsibility under the direction of the superintendent for administering the day-to-day activities of the school” (Walsh, Kemerer, & Maniotis, 2005, p. 27). TEC §11.202(a) identifies the principal as the instructional leader of the school, and TEC §11.202(b) lists seven statutory duties of the principal. School administrators implement policies adopted by the school board through rules, regulations, and directives. These methods of policy implementation represent the law of the district, thus serving in the capacity of administrative law (Walsh, Kemerer, & Maniotis, 2005).

Lastly, each Texas school district and campus is required to have district- and campus-level planning and decision-making committees (TEC §11.251(b)), commonly referred to as site-based decision making committees. These committees are involved in the development of the district- and campus-level improvement plans (TEC §§ 11.252(a); 11.253(c)). The campus-level committees are statutorily directed to be involved in the areas of planning, budgeting, curriculum, staffing patterns, staff development, and school organization (TEC § 11.253(e)). While their role is mostly advisory in nature, the campus-level decision making committee has statutory approval power over the staff development portion of the improvement plan (TEC § 11.253(e)), thus qualifying them for involvement in this legal structure discussion.

Judicial Law

“When disputes arise under constitutions, statutes, and administrative law, some authority must have final say. The courts serve this function” (Walsh, Kemerer, & Maniotis, 2005, p. 6). The judicial court systems are present at both the federal and state levels. In most

instances, until all administrative remedies have been exhausted, the courts refuse to become involved (Walsh, Kemerer, & Maniotis, 2005). When such involvement is inevitable,

The courts have traditionally maintained and enforced the concept of “separation of powers” when confronted with cases involving education. They do not usually question the judgment of either the administrative agencies of the executive branch or the legislative branch. (Alexander & Alexander, 2009, p. 3)

“The courts presume that legislative or administrative actions were enacted conscientiously with due deliberation and are not arbitrary or capricious” (Alexander & Alexander, 2009, p. 4).

In the big picture, both judiciary systems begin at a district court level and offer avenues for an initial appeal at an appellate court level and a final appeal at a supreme court level. The final level of appeal is at the U.S. Supreme Court whose final ruling serves as the law of the land.

Federal judicial law. Disputes involving federal provisions of the U.S. Constitution, federal statutes, or federal treaties may be tried in the federal judicial court system. For questions on federal law, once all administrative remedies have been exhausted, the dispute may enter the federal judicial system at the U.S. District Court level.

The United States district courts are the trial courts of the federal court system. Within limits set by Congress and the Constitution, the district courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters. (U.S. Courts, 2010a)

“There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico” (U.S. Courts., 2010a).

Four of those 94 U.S. District Courts are located in Texas. Texas was divided into four regions—Northern, Southern, Eastern, and Western—to prescribe their respective geographic jurisdiction areas across the state. Decisions of U.S. District Courts are appealable to the U.S. Circuit Court of Appeals within its geographical region. Geographically across the United States of America,

The 94 U.S. judicial districts are organized into 12 regional circuits, each of which has a United States court of appeals. A court of appeals hears appeals from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. (U.S. Courts, 2010b)

Cases appealed from one of the four U.S. District Courts in Texas go to the Fifth Circuit Court of Appeals which has jurisdiction in Texas, Louisiana, and Mississippi. The Fifth Circuit Court has seventeen authorized judgeships and is physically located in New Orleans, LA (Structure of the U.S. Government, 2010).

While decisions of a U.S. Court of Appeals are appealable to the United States Supreme Court, such appeals are rarely granted (Barron Ausbrooks, 2010), as “the U.S. Supreme Court has the authority to decide which cases it wishes to hear” (Walsh, Kemerer, & Maniotis, 2005, p. 8).

The United States Supreme Court consists of the Chief Justice of the United States and eight associate justices. At its discretion, and within certain guidelines established by Congress, the Supreme Court each year hears a limited number of the cases it is asked to decide. Those cases may begin in the federal or state courts, and they usually involve important questions about the Constitution or federal law. (U.S. Courts, 2010c)

Nonetheless, “education in the United States has, of course, been materially shaped by many Supreme Court decisions that emanate from individual rights recognized in the Constitution” (Alexander & Alexander, 2009, p. 103).

The typical path by which a Texas-based federal case would reach the U.S. Supreme Court would be by beginning in one of the four Texas-located U.S. District Courts, being appealed to the 5th Circuit Court of Appeals, and being appealed to and accepted by the U.S. Supreme Court. In some instances, cases with federal questions heard in the Texas Supreme Court may be appealed to the U.S. Supreme Court.

State judicial law. The Texas judiciary consists of multiple layers that permit entry at one of three levels depending on the nature and origination of the dispute. The first level of the Texas judiciary involves justice and municipal courts, the second level involves the county court, and the third level represents the state district court. While smaller-level disputes involving matters of education may originate at a justice, municipal, or county court, “district courts are the major trial courts in the state judicial system, having jurisdiction over major criminal and civil matters” (Walsh, Kemerer, & Maniotis, 2005, pp. 7-8). Moreover, Walsh, Kemerer, and Maniotis (2005) claimed that

Regardless of whether litigation is filed initially in a state district court or as an appeal from a decision of the commissioner, the state court system plays an important role in the resolution of educational disputes. Therefore, it is important to review the composition of the Texas judiciary. (p. 7)

Since the State District Court is a logical starting point for litigation in most educational disputes beyond levels of administrative law, the ensuing discussion of movement through the state court system will begin at the district court level.

The district courts are the trial courts of general jurisdiction of Texas. The geographical area served by each court is established by the Legislature, but each county must be served by at least one district court. In sparsely populated areas of the State, several counties may be served by a single district court, while an urban county may be served by many district courts. District courts have original jurisdiction in all felony criminal cases, divorce cases, cases involving title to land, election contest cases, civil matters in which the *amount in controversy* (the amount of money or damages involved) is \$200 or more, and any matters in which jurisdiction is not placed in another trial court. While most district courts try both criminal and civil cases, in the more densely populated counties the courts may specialize in civil, criminal, juvenile, or family law matters. (Office of Court Administration, 2009)

While the number of state district courts in Texas is too numerous to list, a map of their locations is available at <http://www.courts.state.tx.us/courts/pdf/sdc2009.pdf>.

Decisions rendered by the district courts are appealable to one of the state's fourteen Courts of Appeal. The locations of the appeals courts by district are 1. Houston, 2. Fort Worth, 3. Austin, 4. San Antonio, 5. Dallas, 6. Texarkana, 7. Amarillo, 8. El Paso, 9. Beaumont, 10. Waco, 11. Eastland, 12. Tyler, 13. Corpus Christi and Edinburg, and 14. Houston. These fourteen appeals courts are manned with eighty justices.

In essence, Texas has two supreme courts—one for civil matters and the other for criminal matters (Walsh, Kemerer, & Maniotis, 2005). At the top of the Texas judiciary hierarchy, the Texas Supreme Court, comprised of nine justices, serves as the final appellate jurisdiction for all state-level civil and juvenile cases. The final state-level appellate jurisdiction for all criminal cases is the Texas Court of Criminal Appeals, which is comprised of nine judges (Texas Courts Online, 2011).

The goal at the outset of this study was to capture all of the information that has been presented in this findings section and compile it into a one-page summary. In pulling key information reported in the narrative and diagrammatical data reported in this section of this study, a celled table was created to capture the entire legal structure of Texas public education onto a single page. The data reflected in the rows and columns of Table 1 refer to the structure upon which Texas public schools were developed and currently operate. The data in each cell of Table 1 reveal the type of law and its documented location. For example, rules developed by the Texas Education Agency in response to statutes enacted by the Texas Legislature are compiled in the Texas Administrative Code. The Texas

Education Agency (TEA) rules are appropriately categorized as administrative law and hierarchically are a state-level function. Thus, the information provided in the cell reveals that TEA rules are documented in the Texas Administrative Code and that cell is located at the intersection of the administrative law column and the state-level of authority row. Each cell in Table 1 provides pertinent information specific to the intersection of its level of authority and source of law.

Discussion

The framework developed in this study has educational implications applicable to a wide range of Texas public school stakeholders. The stakeholders of particular interest to whom the framework should prove valuable include school board members, faculty and staff, parents, taxpayers, and the business community. Of those stakeholders, probably the group who most needs to understand the findings presented in this study is the board of trustees. As the body corporate elected to oversee the management of the school district, an understanding of the legal framework under which the school structure is defined becomes essential. The framework developed in this study could serve as a model for board training as school board members seek to meet state-mandated professional development requirements. With the exception of administrators, most faculty and staff have little or no training in school governance, and thus may have a void in their knowledge base about the structure of Texas public schools. In a manner similar to that mentioned for school board members, the framework could serve as a basis for professional development of the faculty and staff employed in Texas public schools. When parents sometimes question the decisions made by the school, administrators could use the model as a tool in explaining why certain rules and procedures are in place in relation to laws and policies. In a similar sense, when taxpayers question the reasons for expenditures, the framework could prove useful in showing how certain legal requirements necessitate particular expenditures. With regard to the business community, sometimes something as simple as making a donation to the school can be difficult due to laws and policies that were developed to protect the school and its employees. Again, the framework could serve as a tool in assisting the business community to understand the purpose of certain policies and the legal path by which they came into existence. Other audiences that could benefit from the framework might include politicians at federal, state, and local levels, and students of school law would certainly benefit as well. The much needed framework developed in this study concisely organizes the legal structure of Texas public schools and should prove to be useful in a variety of settings.

Table 1. Framework for Understanding the Legal Structure of Texas Public Schools.

<h1 style="margin: 0;">Framework for Understanding the Legal Structure of Texas Public Schools</h1> <p style="margin: 0;">Developed by Dr. Gary Bigham</p>				
Levels of Authority	Sources of Law			
	Constitutional Law	Statutory Law	Administrative Law	Judicial Law
Federal	<ul style="list-style-type: none"> • Authority for public education reserved to the states as determined by the framers of the U.S. Constitution and specified in the Tenth Amendment. 	<ul style="list-style-type: none"> • Education-related federal statutes enacted by U.S. Congress are recorded in the Congressional Record and codified in the United States Code. 	<ul style="list-style-type: none"> • Proclamations & executive orders issued by the President are recorded in the Federal Register. • U.S. Attorney General Opinions rendered by the Office of Legal Counsel are recorded in the Federal Register and published in West Law and LEXIS. • United States Dept. of Education policies, rules, and regulations are recorded in the Federal Register and codified in the Code of Federal Regulations. 	<ul style="list-style-type: none"> • Sources of federal court decisions specific to Texas include: <ul style="list-style-type: none"> • U.S. District Court <ul style="list-style-type: none"> *Northern, Southern, Eastern, Western districts (in Texas) • U.S. Court of Appeals <ul style="list-style-type: none"> *5th Circuit, New Orleans, LA • U.S. Supreme Court
State	<ul style="list-style-type: none"> • Authorization for the Legislature to enact a system of public education as established by the framers of the Texas Constitution and specified in Article 7 § 1. 	<ul style="list-style-type: none"> • Education-related state statutes enacted by the Texas Legislature are recorded in the Texas Register and codified in the Texas Education Code. 	<ul style="list-style-type: none"> • Proclamations & executive orders issued by the Governor are recorded in the Texas Register. • Texas Attorney General Opinions are recorded in the Texas Register. • State Board of Education Rules are recorded in the Texas Register and codified in the Texas Administrative Code. • Texas Education Agency Rules and Regulations are recorded in the Texas Register and codified in the Texas Administrative Code. • Commissioner’s Rules are recorded in the Texas Register and codified in the Texas Administrative Code. • Commissioner’s Hearing Decisions are recorded and accessible from the TEA website at http://ritter.tea.state.tx.us/commissioner/. 	<ul style="list-style-type: none"> • Sources of state court decisions specific to Texas include: <ul style="list-style-type: none"> • Justice & Municipal Courts • County Courts • State District Courts • State Intermediate Appellate Courts (14 districts) • Supreme Court (civil) and Court of Criminal Appeals (criminal)
Local			<ul style="list-style-type: none"> • School Board Policies adopted by the Board of Trustees are recorded in the school board minutes and codified in Local School Board Policy. • Local School Administrative rules, regulations, and directives are developed and implemented by, or under the direction and supervision of the school administration. • Site Base Management approval of staff development needs on the improvement plan are documented in the SBM minutes. 	

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