

# CHAPTER 2

## Organization of education in Colorado

The operation of Colorado’s 178 school districts is a big business involving ever-increasing numbers of students and personnel. Nearly 900,000 children are enrolled in Colorado’s public schools, and the number grows annually. The budget for Colorado school districts exceeds \$5.2 billion dollars, from local, state and federal revenues.

As the focus on school district accountability has intensified, the role of the school board member has increased proportionally. Part of being a well-informed public official means understanding the structure of education in Colorado. In this chapter, we will provide an overview of the current structure.

### THE FEDERAL CONSTITUTION

The landmark U.S. Supreme Court decision *Brown v. Board of Education* characterized public education as “perhaps the most important function” of local as well as state government. [74 S.Ct. 686 (1954).] Local control of instruction is not only vital to continued public support of public schools, but it is also of overriding importance from an educational standpoint: Local needs can shape local educational programs.

The federal Constitution makes no reference to public education. Instead, public education is established as a state function in each of the 50 state constitutions. Most states have centralized, state-administered systems of education.

### THE COLORADO CONSTITUTION

**Article IX of the Colorado Constitution contains the legal foundation for our state’s public school system, including the respective roles of the General Assembly, State Board of Education and local school boards. (See text box.)**

#### ARTICLE IX: The foundation for Colorado’s system of public education

The framers of the Colorado Constitution wanted the administration of public schools to be “as near the people as possible.”

Specifically, Article IX of the Colorado Constitution contains the legal foundation for our state’s public school system, including the respective roles of the General Assembly, State Board of Education and local school boards.

- Section 1 vests the general supervision of the public schools in the State Board of Education.
- Section 2 directs the Legislature to establish and maintain a thorough and uniform system of free public schools, wherein all state residents ages six to 21 may be educated gratuitously.
- Section 7 forbids the use of public funds for the support of private schools, churches or sectarian purposes.
- Section 8 prohibits religious or racial discrimination.
- Section 11 provides for compulsory education.
- Section 15, the Local Control Clause, vests “control of instruction in the public schools” in locally elected school boards.
- Section 16 prohibits the General Assembly and the State Board of Education from prescribing the textbooks to be used in the public schools.

## **BOARDS OF EDUCATION: LOCAL CONTROL OF INSTRUCTION**

Unlike most states, the public school system in Colorado grew out of an intentional commitment to local control. Rather than establishing a centralized, state-administered system, Colorado's constitutional framers "made the choice to place control 'as near the people as possible' by creating a representative government in miniature to govern instruction." [*Owens v. Congress of Parents, Teachers and Students*, 92 P. 3d 933, 939 (Colo. 2004).]

So, unlike many of our sister states, local control in Colorado is not a matter of personal political views, national trends or public opinion; it is a matter of state constitutional law. Learning what the state constitution means by "control of instruction" is an essential step toward understanding local school boards' roles in public education.

The Colorado Supreme Court possesses the ultimate authority to interpret the state's constitution and emphasizes, "control of instruction requires power or authority to guide and manage both the action and practice of instruction as well as the quality and state of instruction." [*Denver Bd. of Educ. v. Booth*, 984 p.2d 639, 648 (Colo. 1999).] The court further explains that such control allows localities to tailor educational policy to suit the needs of each district, free from state intrusion. [*Owens*, at 935.]

The court has also decided that districts maintain control over instruction primarily by maintaining control over locally raised funds. [*Booth*, at 648.] The court confirms its conclusion by articulating several benefits flowing from the control of local boards over locally raised tax dollars. [*Owens*, at 941-44.] Some of these benefits include:

- Empowering electors, including parents, with control over instruction
- Providing taxpayers with a means to participate in the management of public education
- Granting a community the freedom to devote more money to educating its children than the state-guaranteed minimum amount
- Enabling the local citizenry greater influence and participation in the decision-making process on how local tax dollars are spent
- Ensuring each district has the opportunity for experimentation, innovation and a healthy competition for educational excellence

In 2013, the Colorado Supreme Court revisited the issue of local control in a school finance case that lasted almost a decade, known as *Lobato v. State of Colorado*. This lawsuit, brought by a group of school districts and students, alleged the state system's level and methods of public school funding violated the Colorado Constitution. Siding with the state, the court's order acknowledged deficiencies in the system but found it did not violate the Colorado Constitution's mandates for a "thorough and uniform" system of education and the control of instruction by locally elected school boards. [*Lobato II*.]

The Supreme Court overruled the trial court's specific finding that school districts are financially unable to meet the demands of state mandates and therefore are clearly unable to exert local control to extend initiatives in pursuit of "experimentation, innovation and a healthy competition for educational excellence." With respect to local control, the Supreme Court acknowledged – as found by the trial court – that school districts may use a substantial portion of their locally raised funds to help their students achieve state standards. Because nothing in the public school financing system itself requires a particular allocation of local funds, the court found the system does not violate local control.

Local school boards are constitutionally entrusted with meeting the needs of students in their communities and must exercise this authority responsibly to ensure this governance model remains relevant and respected by voters and state and federal policy-makers. In sum and practically speaking, "local control of instruction" translates into the ability of individual school boards to make decisions on issues such as curriculum, personnel, budget, school calendars and classroom policy.

## THE GENERAL ASSEMBLY

The General Assembly is the state legislature of the state of Colorado and is charged with maintaining a “thorough and uniform” system of education. It is comprised of 65 people elected to serve in the House of Representatives and 35 people elected to serve in the Senate. The legislative bodies in Colorado function in much the same manner as do the House and Senate of the federal government.

The Colorado House and Senate both have standing committees on education that review proposed legislation pertaining to education. Proposed bills must be “voted out of committee” before the respective bodies may consider them. Education bills introduced in the House must pass through the House Education Committee and the Appropriations Committee (if there is a fiscal impact) and then be approved by the House of Representatives. The bills then go to the Senate, where the process is repeated. Bills introduced in the Senate follow a similar pattern except that they are considered first by the Senate, then the House. Bills approved by the House and Senate are then sent to the governor and, when signed by the governor, become law.

The same *Lobato* decision that discussed the local control constitutional provision also explained the General Assembly’s “thorough and uniform” constitutional obligation upholding the state’s school finance system. The Colorado Supreme Court rejected the argument brought by school districts and students alleging that the state was failing to meet the constitutional mandate to provide a “thorough and uniform” system of education.

Initially, the Supreme Court held (in *Lobato I*) that “thorough and uniform” had been defined by the legislature through a comprehensive set of school laws, including CAP4K (SB 08-212), the Education Accountability Act of 2009 (SB 09-163) and the educator effectiveness legislation (SB 10-191). In fact, the *Lobato I* order specifically stated, “The trial court [which would hear all the evidence of the case firsthand] may appropriately rely on the legislature’s own pronouncements to develop the meaning of a thorough and uniform system of education.” Citing *Lobato I*, the trial court ruled, “There was no effort to analyze the relationship to the actual costs [of state education laws] to provide an education of any particular quality. The failure to do any cost analysis and to provide for funding based on such an analysis demonstrates the irrationality of the existing school finance system.”

The state appealed the trial court’s decision to the Supreme Court, which had recently experienced a change in the membership of the court. Rather than following the *Lobato I* court’s guidance or the trial court’s conclusion based on that guidance, the *Lobato II* court went to Webster’s dictionary to define a “thorough and uniform” system of education as one “of a quality marked by completeness, is comprehensive, and is consistent across the state.” Having articulated a constitutional test that does not require taking into account the education system that the school finance system is intended to fund, the *Lobato II* decision makes no mention of the Colorado Constitution’s legislative history, the trial court’s 178-page order or the record created over five weeks of trial. The court concludes in a succinct five paragraphs that Colorado use of a uniform basic school formula satisfies the constitution’s thorough and uniform provision.

The *Lobato* case serves as a reminder that litigation is never a sure bet, no matter how good the case or the cause may be.

## **STATE BOARD OF EDUCATION**

**Colorado's Constitution provides that the general supervision of the public schools shall be vested in the State Board of Education, whose powers and duties are prescribed by law.**

The State Board currently consists of seven elected members who serve without pay. The constitution provides that there shall be one State Board member elected from each of the congressional districts. When the number of congressional districts in the state is an even number, an additional State Board member is elected at large. This ensures that there will always be an odd number of persons serving on the State Board.

The State Board is the governing board of the Colorado Department of Education (CDE). Within the limits of its jurisdiction, the State Board appoints the commissioner of education, makes rules and regulations that apply to school districts, accredits public school districts and regulates educator licensing, among other things. The State Board exercises judicial authority with regard to appeals by charter schools. The State Board appoints and receives recommendations from a variety of advisory commissions and committees in the process of carrying out its responsibilities.

The State Board has authority to release school districts from some state statutes and regulations. Districts can pursue this flexibility under the waiver statute or Innovation for Schools Act [C.R.S. § 22-32.5-108.] The process for seeking a waiver has been expedited for those school districts with fewer than 3,000 students. Most recent waiver requests to the State Board involve conditions of teacher employment.

## **COMMISSIONER OF EDUCATION**

**The Office of Commissioner of Education was made an appointive office by a 1948 amendment to the constitution. The commissioner serves as the executive officer of the State Board and is the chief administrator of CDE.**

The commissioner advises the State Board concerning educational matters, submits reports as required by law to the governor and the General Assembly and is responsible for personnel administration in the Department of Education. It is the commissioner's duty to execute the policies and regulations adopted by the State Board. The commissioner must maintain adequate statistical and financial records of the school districts and maintain a continuous research program to stimulate improvements in education. In addition, the commissioner has the authority to issue instructions to school officials concerning the governance of the public schools, to prescribe forms and items to be included in reports submitted to the department, to construe provisions of school law and to cause the preparation and distribution of printed materials that may be beneficial to school personnel and students.

## **COLORADO DEPARTMENT OF EDUCATION**

**The Colorado Department of Education provides leadership, resources, support and accountability to the state's 178 school districts to help them build capacity to meet the needs of the state's nearly 900,000 public school students. CDE also provides services and support to boards of cooperative educational services (BOCES), early learning centers, state correctional schools, facility schools, the state's libraries, adult/family literacy centers and state high school equivalency testing centers, reaching learners of all ages.**

As the administrative arm of the State Board of Education, CDE is responsible for implementing state and federal education laws, disbursing state and federal funds, holding schools and districts accountable for performance, licensing all educators, and providing public transparency of performance and financial data. CDE serves students, parents and the general public by protecting the public trust through ensuring adherence to laws, strong stewardship of public funds and accountability for student performance.

## **STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION**

The State Board for Community Colleges and Occupational Education (SBCCOE) is charged with establishing and maintaining a state system of community colleges. It also provides the state-level structure for the administration of occupational education programs in the public schools.

This board also administers the laws relating to occupational education programs in public schools. It must review and approve postsecondary occupational education programs to be offered through boards of cooperative educational services. The board also supervises the allocation of all state and federal funds provided for occupational education programs and purposes and establishes minimum qualifications for teachers of occupational subjects and other professional personnel who provide occupational education supervisory and counseling services in the schools.

## **COLORADO COMMISSION ON HIGHER EDUCATION**

The Colorado Commission on Higher Education (CCHE) is the state policy and coordinating board for Colorado's higher education system. CCHE sets policies, in accordance with state law, that apply to all state-supported institutions of higher education. This includes all postsecondary institutions supported in whole or in part by state funds (including junior colleges and community colleges), extension programs of the state-supported universities and colleges, local district colleges and area vocational schools. CCHE's policies also apply to the Board of Regents of the University of Colorado and the institutions it governs.

The community colleges, as well as state colleges and universities, provide many services to school districts and to boards of education. Most of these institutions have personnel who are willing to assist districts by providing consultant services, conducting school building surveys, providing speakers for various occasions and maintaining a close working relationship with secondary schools to better prepare students for entrance into college. State law directs CCHE to establish a network to connect the faculty of postsecondary institutions with the teachers in school districts for the purpose of exchanging information. Most of the institutions that provide teacher training also maintain a placement agency to assist school officials with the selection and screening of prospective employees.

The law recognizes that the public system of elementary and secondary education must provide students with the skills and abilities necessary to make the transition to the postsecondary system. It is the prerogative of local boards to establish the goals and standards necessary to provide these skills. At the same time, CCHE is authorized to set the standards for admission to the postsecondary system. When these standards are raised, it has a direct impact on local school districts and the students they serve. Ideally, there should be continual dialogue between representatives of elementary and secondary education and higher education because of common goals, numerous challenges, opportunities and overlapping interests.