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NEW YORK CITY SCHOOL DECENTRALIZATION

I. Introduction

The 1969 New York Education Act¹ grew out of a movement demanding decentralization of the New York City school system. The ultimate goals of this movement were to: (1) encourage community awareness and participation in the development of educational policy, and (2) create sufficient flexibility in the school system to enable administrators to resolve the diverse needs of the varying communities within the city.² Support for the plan arose out of more than a decade of dissatisfaction with the centralized system by educators, school administrators, and parents.³ Supporters of decentralization had pointed in particular to the failure of the centralized system to achieve racial integration and to raise the achievement levels of black and Puerto Rican students.⁴ They also relied upon the findings of the Coleman study,⁵ conducted under the auspices of the Department of Health, Education, and Welfare, to show the need for decentralization.⁶

The advocates of decentralization, largely representing minority group interests, maintained that the centralized school system could never be responsive to the individual needs of all the socio-economic groups in the City. A centralized system, it was

¹ N.Y. EDUC. LAW § 2590 (McKinney Supp. 1969), effective July 1, 1970.

² Mayor's Advisory Panel on Decentralization of the New York City Schools, Reconnection for Learning, at ii, November 9, 1969.

³ *Id.*, at 1. See also M. BERUBE & M. GITTELL, CONFRONTATION AT OCEAN HILL-BROWNSVILLE, 329 (1969).

⁴ BERUBE, *supra* note 3, at 3-13. The author points out that "nearly 85% of Harlem school children are two years behind the norm at reading," at 3.

⁵ Coleman, Equality of Educational Opportunity. (Washington, D.C., United States Department of Health, Education, and Welfare, Office of Education. 1966) Coleman's study included schools throughout the United States. He found the educational level of caucasians significantly higher than that of minority groups at comparable levels in school. He also found, especially in the large cities, that students' belief in a sense of control over their environment and a belief in the responsiveness of that environment are the most important criteria in raising levels of achievement. He concluded that the educational system must be changed so that it is responsive to the needs of minority groups and that these groups must have some control over the system. *Id.*, at 219 and 320-325.

⁶ Mayor's Advisory Panel, *supra* note 2, at 11.

argued, acts on a city-wide basis and is therefore not sensitive to particular community problems, nor capable of solving them. By decentralizing the system, control would pass to the communities, which are more cognizant of the nature of the educational problems in their schools, and are better equipped to solve them. The opponents of decentralization, mainly the middle class for whom the centralized school system had been unobjectionable, claimed however that the communities had little experience in running a school system, and that this responsibility was best left in the hands of professionals. Efficient and capable schools, they warned, could only exist under a centralized administration.⁷

The backers of decentralization campaigned vigorously for their cause. Reacting to the community and political pressure that resulted, the New York City Board of Education, on October 20, 1966, announced its decision to experiment with decentralization and community control in various City schools. Three demonstration districts were set up in 1967: Intermediate School 201, Two Bridges, and Ocean Hill-Brownsville. Supporters of decentralization also initially convinced the New York State Legislature of the need to develop a decentralization program. In 1967, the legislature authorized Mayor Lindsay to prepare and submit to it a plan for the decentralization of the New York City schools.⁸ The result was the Bundy Plan.⁹ Opposed by the United Federation of Teachers, the New York City Board of Education, and some school administrators as establishing too decentralized a school structure,¹⁰ the Bundy Plan failed to pass the legislature. Instead, the legislature directed the New York City Board of Education to submit its own plan for decentralization.¹¹ This plan was completed in January 1969; it divided the City into 29 school districts and established district school boards each with control over teacher assignment and transfer, curriculum, and texts. Lo-

⁷ See generally BERUBE, *supra* note 3.

⁸ Laws of New York, 190th Session, Chapter 484, 1967.

⁹ Mayor's Advisory Panel, *supra* note 2. The Panel formulated the Bundy Plan. It recommended the creation of from 30 to 60 autonomous local school boards, which were to be given the power "to authorize the general courses of study and approve the content . . . to authorize and determine the textbooks to be used . . . (and) to appoint the supervisory, administrative, teaching, and other personnel;" see 77-78 of the report.

¹⁰ BERUBE, *supra* note 3, at 15.

¹¹ Marchi Plan, N.Y. EDUC. LAW § 2564 (McKinney Supp. 1968).

cal control was restricted, however, by the qualification that a central school board was "to promulgate educational standards and minimum curriculum requirements for all schools and programs."¹² In the sensitive political climate following the Ocean Hill-Brownsville controversy,¹³ many state legislators felt that the Board of Education's plan also proposed too decentralized a school structure for the legislature to accept. However, after numerous compromises, the 1969 New York Education Act did pass the State legislature.¹⁴ This Act, the product of political compromise, is a diluted version of the Board of Education's plan.

Political compromise notwithstanding, the New York Act represents a major change in the educational process arising from the quest of minority groups for participation in the political process. The controversy over decentralization, as part of the larger issue of community self-determination, has spread to many of the large urban centers. The effectiveness of the New York school decentralization should have considerable bearing on the outcome of the decentralization movement elsewhere inasmuch as the other urban school systems closely resemble the New York situation albeit on a smaller scale.¹⁵

II. Prior Structure

The 1969 Act does, theoretically at least, alter the prior structure of the New York City school system. Under the prior education law,¹⁶ the New York City Board of Education was appointed

¹² Board of Education, Plan for Development of a Community School District System for the City of New York, at 24(§ 7(a)(2) of the proposed statute), January 29, 1969.

¹³ Ocean Hill-Brownsville was one of the three decentralized districts under the city's Board of Education experiment in decentralization. To some commentators the controversy began when the local board entered the involuntary transfer of thirteen teachers, five assistant principals, and one principal to headquarters for reassignment. The United Federation of Teachers went on the first of what were to be three strikes between May and October claiming the transfers were in violation of due process. After these months of dissension, control was taken from the local board in November 1968, and placed in a state trusteeship. The nature of the conflict became in many ways racial: black local board against Jewish teachers. Opponents of decentralization, including the United Federation of Teachers, claimed the experiment in decentralization was a resounding failure. See BERUBE, *supra* note 3.

¹⁴ N. Y. Times, May 2, 1969, at 42, col. 1 (city ed.).

¹⁵ See California Senate Bill 264 (1969), Massachusetts House Bill 5344 (1969), MICH. COMP. LAWS §§ 388.171-177 (1969). The Michigan act, dealing with Detroit, bears close resemblance to the New York Act, providing for elected local boards having control over teacher assignment, curriculum, and spending, subject to guidelines established by an elected central authority.

¹⁶ N. Y. EDUC. LAW § 2554 (McKinney Supp. 1966).

by the Mayor and was vested with *all* powers within the school system. The Board appointed, transferred, and fired the Superintendent, the centralized administration, and the teachers; it authorized the courses, approved their content, and determined the texts; it prepared the budget; and it established basic school policy. The Board was also authorized to establish local school boards, but the local boards were to be "advisory only."¹⁷ In practice, the Board of Education dictated course, curriculum and texts.¹⁸ Teachers were often assigned without regard to the needs of the communities or to the teachers' capabilities to meet these needs.¹⁹ It was against this authority that the East Harlem parents rebelled, by boycotting I.S. 201 in September 1966, demanding decentralization and community control.²⁰ The 1969 Act was the product of this movement to change the centralized power structure.

III. Major Provisions of the 1969 Act

Under the new Act, the central school board and the superintendent will be retained, designated as the city board and the chancellor. The city board will be composed of one elected representative from each borough* and two representatives appointed by the Mayor.²¹ Thus, the city board will be largely an elective rather than an appointive body. The board, in turn, appoints the chancellor and may dismiss him for cause.²² Between thirty and thirty three local school districts, called community districts, are to be created, each with a minimum of 20,000 children in average attendance.²³ The community districts are to be formed on the

¹⁷ *Id.* § 2564, prior to Marchi Amendment, *supra* note 11.

¹⁸ BERUBE, *supra* note 3, 327-329. See also ROGERS, 110 LIVINGSTON STREET, 271-285 (1968).

¹⁹ ROGERS, *supra* note 16, at 275-278; Mayor's Advisory Panel, *supra* note 1, at 4.

²⁰ BERUBE, *supra* note 3, at 13.

²¹ N.Y. EDUC. LAW § 2590-b (McKinney Supp. 1969). The change from an appointed to a largely elected board may change not only personnel on the central board but also the approach of the central board to community control. Theoretically, an elected board should feel greater responsibility for the desires of the community electorate. Regardless, whether the elected board will in fact respond to the desires for community control is too uncertain to allow speculation.

²² *Id.* § 2590-h.

²³ The actual creation of the districts will be made by an interim board prior to the election of the first city board. This interim board will be composed of five members, each Borough President appointing one. New York Session Laws, 1969, Chap. 330, § 11.

basis of such criteria as special educational needs of the communities, existing school and transportation facilities, convenience of location, and heterogeneity of pupil population.²⁴ High schools, special and vocational schools are not included in the plan because of the existing "comprehensive high school program" taking shape in the city.²⁵

A community board will be established in each community district,²⁶ composed of members elected by the eligible voters of each district.²⁷ Much of the power of the old central Board of Education is ostensibly shifted to these community boards by the 1969 Act. The community boards will employ a community superintendent to whom the board delegates "such of its administrative and ministerial powers as it deems appropriate."²⁸

However, the creation of this decentralized structure will not necessarily decentralize power within the school system. The important consideration is not the label "decentralization," but the reality of community control. Control will ultimately reside in that group which determines: (1) teacher appointments, (2) course, curriculum and texts, (3) fiscal policy, and (4) basic school policy. Although the Act does not delineate where the control lies in all these cases, the provisions of the Act do provide sufficient basis for reasonable speculation on the likelihood of community control.

A. Teachers: Hiring, Firing and Transfer

Appointment of teachers is effectuated as follows: "Each community board shall appoint teachers for all schools and programs under its jurisdiction who are assigned to the district by the chancellor from competitive eligible lists."²⁹ These eligibility lists

²⁴ N.Y. EDUC. LAW § 2590-b (McKinney Supp. 1969). In dividing the city into community districts, the interim board may be able to affect the power base of community control by merging segments of ghetto areas into surrounding areas. Such gerrymandering might continue to deny black and Puerto Rican groups effective control over much of their education.

²⁵ *Id.* § 2590-h(1)(a). See also note 12, *supra*, at 23.

²⁶ *Id.* § 2590-b(2) (a).

²⁷ *Id.* § 2590-c(3). Eligible voters are those persons who are registered voters residing in the community district and every parent of a child attending a school within the district who is a citizen of the state, resident of New York City for 90 days, and 21 years of age.

²⁸ *Id.* § 2590-e(1).

²⁹ *Id.* § 2590-j(4)(c). All statutory references under the subheading *Teachers* are found in § 2590-j.

are compiled by the Board of Examiners³⁰ and include only those teachers who meet both the state and city requirements. Lists are made periodically, but each list must be chronologically depleted before a teacher may be selected from a later list. An exception is made for those schools in the lower forty-five percent of the system as determined on the basis of student achievement on reading tests. For such schools, the community boards may appoint any teacher who has met the state teaching requirements and has passed either the City teachers' examination or the National Teachers' Examination, regardless of position or presence on an eligibility list.³¹

The community board also controls retention of teachers. The community board, following a hearing and a majority vote, may transfer or dismiss a teacher for any substantial reason.³² This decision, however, may be appealed by the teacher to the city board, which can affirm, modify, or reverse the community board.³³

The 1969 Act differs from the Bundy Plan and the Board of Education's plan in two respects. First, under the new Act, each community district may assign only those teachers who have been assigned to that district by the chancellor. There is no city-wide selection as provided in the previous plans. While this is not true of the schools in the special forty-five percent category, it seems fair to conclude that these schools' freedom of choice will be significantly limited after the bulk of teachers have already been assigned. Second, whereas the earlier plans would have terminated the general requirement of City tests for teachers and the existence of the Board of Examiners, these are retained under the new Act.

The impact of these two changes is difficult to predict. On the one hand, the central authority (city board, chancellor) retains much control over teacher assignments as well as continuing control over teacher qualifications. On the other hand, those

³⁰ *Id.* § 2590-j(3)(a)(1). The Board of Examiners prepares and administers examinations to candidates for teaching and supervisory positions in the school system. The Board of Examiners consists of five members appointed by the city board (formerly by the Board of Education). *Id.* § 2569.

³¹ *Id.* §§ 2590-j(5)(b)(c).

³² *Id.* §§ 2590-j(7)(a), 2590-j(7)(b)(6).

³³ *Id.* § 2590-j(7)(f).

schools in the forty-five percent category, which can hire without recourse to the eligibility lists, are also those which most desire decentralized community control and are arguably those which most need it; that is, the under-achieving, often predominantly black and Puerto Rican, schools. Should the supply of teachers be sufficiently great, or should these schools be given first choice of all available teachers, the under-achieving schools may develop a teaching force better adapted to their requirements. However, the Act is somewhat unclear on the procedure to be followed for teacher selection by the under-achieving schools, and thus it remains to be seen whether this possibility will materialize.

B. Course, Curriculum, and Textbooks

Authority over course, curriculum, and textbooks remains largely centralized. It is the chancellor's responsibility to "promulgate minimum educational standards and curriculum requirements."³⁴ The city board shall "approve determinations of the chancellor relating to course and curriculum requirements."³⁵ The community boards are delegated the vague authority "to determine matters relating to the instruction of students."³⁶ This authority includes the right to select textbooks and other instructional materials, conditioned upon the approval of the chancellor.³⁷ It is within the discretion of the city board and the chancellor to give the community boards considerable authority in the selection of courses, curriculum, and texts, thereby effecting greater community control. On the other hand, the city board may so restrict this potential that local control will be no greater than that experienced under the prior centralized system.

C. Budget

Budget estimates for the operation of a community board and for the schools in its district are to be initially prepared by the local superintendents subject to the approval of that community board, rather than by the centralized authority under the previous

³⁴ *Id.* § 2590-h(8).

³⁵ *Id.* § 2590-g(1).

³⁶ *Id.* § 2590-e(3).

³⁷ *Id.* § 2590-e(3).

system.³⁸ The chancellor then reviews the estimates of the individual districts and submits to the city board his recommendations and a total estimate for the entire City. The city board reviews the chancellor's budget requests, makes its own modifications, and then submits its budget request to the Mayor.

The city board is to allocate funds to the community districts "on the basis of objective formulae established annually by the city board."³⁹ The formulae shall "reflect the relative education needs of the community districts to the maximum extent feasible."⁴⁰ The community boards will have authority to develop their own schedule of expenditures and to alter this schedule without city board approval, provided that all changes are consistent with the curriculum requirements and do not result in liabilities greater than their funds.

Funds to finance experimental programs shall be allocated by the city board according to the need of the area and the value of the innovation. With regard to special, federal, state, and private funds, "each community board may contract for and receive funds to be transmitted to the city board and disbursed through the chancellor."⁴¹ The community boards may also contract with government and private agencies, the city board and other community boards for appropriate purchases or services, subject to the approval of the chancellor.

While it is true that the community boards will now, for the first time, have a voice in determining the proper allocation of funds, the city board is nevertheless much more than a centralized clearing house. The final budget must be approved by the city board, and the criteria for allocation of funds to the districts are prepared by it. The city board has the discretion to establish formulae attuned to the special financial needs of particular areas and to so allocate the funds. On the other hand, it may, in its discretion, do no more than provide for the basic school needs of all schools.

³⁸ *Id.* § 2590-i(2). All statutory references under the subheading *Budget* are found in § 2590-i.

³⁹ *Id.* § 2590-i(7).

⁴⁰ *Id.*

⁴¹ *Id.* § 2590-i(14)(a).

D. Basic School Policy

The formulation of basic school policy falls within the powers of the chancellor, who must “promulgate such rules and regulations as he may determine to be necessary or convenient to accomplish the purposes of this Act, not inconsistent with the policies of the city board.”⁴² The community boards also formulate policy as an adjunct of their authority to control and operate all schools except high schools and vocational schools. Their policy-making is restricted, however, by the requirement that such control and operation must not be “inconsistent with the policies established by the city board.”⁴³ From this unclear delineation of authority, it is important to recognize that the city board ultimately has the power to control basic school policy. The school rules and regulations are set by its employee, the chancellor, and the programs of the community boards must not conflict with the policies of the city board.

Moreover, the city board is the final adjudicator of all policy disputes. For all such disputes, including those between community board and teacher, and chancellor and community board, the city board serves as an “appellate tribunal,” with authority to stay the enforcement of orders issued by the chancellor or community boards, and the authority to issue final orders itself.⁴⁴ To enforce such orders, the city board may withdraw specific community board powers and confer them upon the chancellor, or it may suspend or remove an entire community board or any member thereof.⁴⁵ In short, a community board’s control over local policy is not very secure. The new Act gives the illusion of decentralized decision-making in the formulation of basic school policy, with the reality of a centralized authority.

IV. Conclusion

Although the new structure creates the potential for decentralization, the actual degree of decentralization that will result is difficult to predict. It is reasonable to conclude that ultimate

⁴² *Id.* § 2590-h(16).

⁴³ *Id.* § 2590-e.

⁴⁴ *Id.* § 2590-1(1 and 2).

⁴⁵ *Id.* § 2590-1(1).

control of the structure under the new system remains largely in the hands of a central authority. The role of the new city board is much the same as that of its predecessor, the Board of Education. The communities have no authority at all in the important sphere of administration of the high schools, special and vocational schools. Nevertheless, the new Act vests sufficient discretion in the city board and the chancellor to achieve genuine decentralization. By allowing the community boards to set basic school policy, instead of hamstringing them with directives and regulations from the chancellor or the city board, and by allowing the boards maximum discretion in their use of funds, the city board and chancellor can shift much of the administrative control to the communities. By providing the communities with a choice of teachers preselected for the qualities desirable in particular communities, instead of arbitrarily placing teachers on the eligibility lists, the city board and the chancellor can ensure that the communities have a substantial opportunity to implement local control over the nature and quality of instruction. Likewise, by providing a broad range of courses, curriculum, and texts for community selection, the city board and chancellor can channel control over the content of education to the community boards. On the other hand, through restrictive action in these areas and through jealous retention of the powers of the central authority, the city board and chancellor can retain the centralized system that preceded the 1969 Act and thus defeat the policy behind it.

— *Barry D. Hovis*

*[Ed. Note] While this article was in press, a Federal District Court in New York held unconstitutional those provisions of the 1969 Education Act which provided for election of the city board. The court held that the election of one member to the board from each of New York City's five boroughs violated the one-man, one-vote doctrine inasmuch as the boroughs differed in population. N.Y. Times, Nov. 22, 1969, at 1, Col. 4.