

Legal Responsibilities of Local School Boards

Mike O'Neal

Attorney at Law

O'Neal Consulting, LLC

On behalf of Kansas School Board Resource Center

Constitutional Authority & Mandate

- Board authority comes from Art. 6, §5 of the Kansas Constitution.
 - “Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards.”
 - “General supervision” by the State Board has been interpreted by the Ks. Supreme Court to mean “something more than advise but something less than control”. (*State v. Miller v. USD 398*, 212 Kan. 482)
 - Local boards are constitutional. School districts and their administrators are statutory. Local boards may delegate tasks to the administration, but ultimate control and responsibility lies with the local board.

Statutory Authority & Mandate

- K.S.A. 72-134 requires the local boards to appoint a superintendent, who is “subject to the orders, rules and regulations of the board of education.”
- K.S.A. 1138 allows local boards to “prescribe courses of study, adopt rules and regs for teaching, approve and adopt ‘suitable’ textbooks and study materials”, subject to State Board of Ed rules. In addition, the “board may transact all school district business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop and operate local public schools.”

Building-based Needs Assessment Law

- For decades, Kansas has had a requirement that each year **“the board of education shall conduct an assessment of the educational needs of each attendance center in the district.”**
- The board is required to utilize this information when building and approving the annual budgets.
- A shocking number of board members we’ve visited with have never been briefed on this responsibility, or if they knew about it, assumed their only function was to approve the ultimate proposed budget.
- It was not the intent of the Legislature to have school district administration in charge of this function or its compliance.

- As a result, K.S.A. 72-1163 has been amended to emphasize the importance of the local board's role in ensuring that district budgets are developed with student achievement at the forefront.
- Not only must the board conduct the building needs assessments, the board minutes must reflect that the board not only reviewed the assessments, but also evaluated the assessments and then indicate “**how the board used such assessment in the approval of the school district's budget.**”
- The statute now mandates that the school district budget “shall allocate sufficient monies in a manner reasonably calculated such that all students may achieve the goal set forth in K.S.A. 72-3218.” (*Rose capacities*)

Building-based Needs Assessment's Role in Improving Student Performance

- The new needs assessment law requires that for each school year the local board must review the state assessment results and document:
 - (A) the barriers that must be overcome to have all students achieve “proficiency above Level 2 for grade level academic expectations on such assessments;
 - (B) any budget actions including possible reallocation of resources that should be taken to address and remove such barriers; and
 - (C) the amount of time the board estimates it will take for all students to achieve proficiency above Level 2 for grade level academic expectations on the state assessments if such budget actions are implemented.
- The statute is directive, not just a “board checking the box” exercise!

- The law is intended to make local boards play a critical role in taking the actions needed to improve student performance.
- Instead of building budgets based on “last year” or “because we’ve always done it this way”, budgets should reflect what the board has learned from the state assessments and how allocation of resources plays a role in student outcomes. How will the budget you next approve ensure a better per-student performance outcome next year? **How many students Level 2 or Level 1 will continue to be left behind if their educational needs aren’t addressed?**
- The Kansas State Board of Education has established a budget planning process
GOAL: **“To prepare each student for post-secondary opportunities and success.”**
- OUTCOME: **“Align school district budgeting with improvement needs for each student, as identified by the building needs assessment.”**
- In short, budgets should be built from the classroom up, not the administration building down.

School Site Councils

- K.S.A. 72-5170 requires that each school in every district establish a school site council composed of the principal, teacher representatives, other school personnel, parents, the business community and other community groups. The statute gives the site councils a full range of input opportunities to advise and make recommendations to local boards.
- This provision appears to be either underutilized or not well understood. E.g., site councils should be involved when building-based needs assessments are conducted to ensure a full range and variety of important inputs.

Accounting Handbook for USDs

- For many years, KSDE has published this accounting handbook so that there is a uniform USD-wide accounting system.
- Account Code #1000 is “Instruction”. “Instruction includes the activities dealing directly with the interaction between teachers and students. Teaching may be provided for students in a school classroom, in another location such as a home or hospital, and in other learning situations such as those involving co- curricular activities. This includes expenditures formerly reported under 3400 Student Activities. Teaching may also be provided through some other approved medium such as two- way interactive video, television, radio, telephone, and correspondence. Included here are the activities of aides or classroom assistants of any type (clerks, graders, teaching machines, etc.) which assist in the instructional process.”

Importance of Instruction

- Here is what the Accounting Handbook says about “Instruction”:
- *“Although all other functions are important, this function acts as the most important part of the education program, the very foundation on which everything else is built. **If this function fails to perform at the needed level, the whole educational program is doomed to failure regardless of how well the other functions perform.** Instruction not only includes the regular face-to-face classroom teaching but also such things as lab sessions, independent work, and education field trips.*
- *By far the biggest cost items in this function are teacher salaries and associated costs such as social security, fringe benefits, and workers’ compensation. Other major costs are providing substitutes and paraprofessionals who work with the teachers. All of the materials needed in the delivery of the instructional program by the teacher and helpers are another major cost. Costs that do not involve teachers, teacher helpers (paraprofessionals, substitutes, etc.) and the students’ actual learning should not be included in this category.”*

65% Instructional funding goal

- **72-5191. Sixty-five percent of moneys to be spent on instruction.** (a) It is the public policy goal of the state of Kansas that at least 65% of the moneys appropriated, distributed or otherwise provided by the state to school districts shall be expended in the classroom or for instruction.
- Passed in 2005 to address the Court's assumption that declining student performance was a function of underfunding of schools, this policy goal has never been achieved since the statute was passed.
- Instructional spending was just over 50% then and even now is just over 50%
- The cumulative effect of not following the statutory goal over the intervening years is that over **\$12B** that should have been allocated and spent for instruction was instead spent on other items, and overall outcomes have not improved; they have actually declined.

Literacy

- K.S.A. 72-3262 establishes the Every Child Can Read Act, which requires every school district to measure and evaluate literacy achievement of K-3 students using state assessments and other assessment tools. Districts are required to use this information to provide targeted interventions to students who are not proficient in literacy.
- K.S.A. 72-5153 requires districts to track and report to KSDE the longitudinal performance of students that are continuously receiving at-risk services, using data including state assessments, English language proficiency assessments, graduation rates, ACT scores, individualized education program goals, norm-referenced test results and attendance.

At-Risk Services Requirement

- K.S.A. 52-5153 sets out the mandate and restrictions on the use of at-risk funds the districts receive. By law they can only be used to “provide students identified as eligible to receive at-risk educational programs or services with additional educational opportunities, interventions and evidence-based instructional services above and beyond regular educational services.”
- Notwithstanding this clear mandate, two consecutive Legislative Post Audit studies concluded that audited districts were not following the law. At-risk students were not receiving services targeted to their individual needs.
- “Evidence-based instruction” means an educational delivery system based on peer-reviewed research that consistently produces better student outcomes over a 5-year period than would other-wise be achieved.

Local Boards' At-Risk Responsibility

- The at-risk statute requires local boards to annually prepare and submit to the State Board a report on the actual at-risk programs the district provided to the eligible at-risk students. The report must include:
 - The number of students served
 - The type of at-risk programs provided
 - The data and research the district used in determining what programs were needed
 - A report on the longitudinal tracking of student performance after receiving services
 - Any other information required by the State Board