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**A Reverse Engineering Approach to Improving Teacher Quality:  
The Hiring Decision and State Laws Governing School Board Conduct and Ethics**

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“You're damn right we only hire by nepotism in this district. But there are two kinds of nepotism:

1. Good nepotism is when this Board you and I were elected to is smart enough to hire my son or daughter, and
2. Bad nepotism is when this Board is dumb enough to hire your son or daughter.”

--Minutes of New Castle, Pennsylvania School Board Meeting, as reported in the *New Castle Gazette*.

## **1. Introduction**

Chairman McKeon, and members of the Subcommittee on Postsecondary Education, Training and Life-Long Learning, I want to thank you for the opportunity to testify this morning about my findings and views on:

1. the teacher hiring practices of local school boards;
2. the state statutory and judicial contexts within which such decisions are made; and,
3. ways to express effectively the federal interest in encouraging states to do what they may well be incapable of doing themselves to improve the quality of new and existing classroom teachers.

My perspective on how to address the teacher quality problem is likely to be different from what you have heard from other witnesses. National debates over how to improve teacher quality largely center on how to improve the *supply* of newly prepared teachers. Views range from 1) simply entrusting national organizations representing schools of education and the current teacher

force to do a better job through self-regulation, to 2) substantially deregulating entry into the teaching profession.<sup>1</sup> I favor the latter far more than the former, because:

- a) schools of education publicly admitted that they knew they were not doing a good job in the 1980's<sup>2</sup> but have essentially continued with business as usual to this day,
- b) schools of education undoubtedly must be responsible for the classroom results *currently* observed by a mainstream education reform group:

Most schools and teachers cannot produce the kind of learning demanded by the new reforms---not because they do not want to, but because they do not know how, and the systems in which they work do not support them in so doing.<sup>3</sup>

- c) there is compelling recent evidence that education school faculty have educational values and expectations of student achievement which are largely out of step with the public.<sup>4</sup>

In business parlance, further entrusting teacher quality reform to schools of education and their national organizations in light of these points raises questions of due diligence if not negligence. I should note that it is frankly much easier to speak these simple truths while tenured at university *without* a school of education, than were I untenured at a university *with* a school of education. In the latter case, I would either indirectly benefit from the sorts of cross-subsidies which schools of education are forced to provide by their provosts and university presidents, or myself be a source of the cross subsidy. Teacher preparation is big business, and the stakeholders, especially at the publicly supported teacher preparation institutions, are quite able to make

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<sup>1</sup> See National Commission on Teaching and America's Future(1996), and Thomas B. Fordham Foundation, *A Manifesto: The Teachers We Need and How to Get Them*, May 4, 1999.

<sup>2</sup> See Holmes Group(1986)

<sup>3</sup>What Matters Most: Teaching for America's Future, p. 5.

<sup>4</sup> See Farkas, Johnson, and Duffet(1997).

persuasive arguments to state legislatures which results in their continued prosperity. I have heard they raise the specter of lost economic development opportunities (jobs) that might result from downsizing, to the erection of a football stadium named after a sitting state politician.

Once one internalizes that 1) having more academically qualified teachers improves student performance, and 2) that local school districts do not hire the most academically qualified teachers, one is led to examine who gets hired to teach and why. This in turn leads one to consider some deeper and more systemic problems that stand in the way of improving the quality of classroom instruction. Simply deregulating supply (which I favor) will not automatically improve the quality of classroom teachers, for it fails to address how and why particular teachers get hired. Once the hiring decision is understood, much of the mystery over mediocre student achievement disappears; however, how to remedy this is not a simple matter.

By way of summary, let me state my conclusions:

1. unless the teacher hiring decision is cleaned up, all bets are off in my view for student learning and achievement to improve in the US;
2. teacher demographics in most states are such that failure to clean up the hiring decision within the next 5 to 10 years will permit if not ensure the replication of what we currently have in the classroom (the good, the bad, and the mediocre), and adversely affect the trajectory of our standard of living for the next 30 to 40 years;
3. it is unlikely that the states themselves are capable of cleaning up the hiring decision, because:
  - the state statutory and judicial setting in which elected school boards and their agents (superintendents etc.) operate does *NOT* obligate them to take positive actions as elected

or appointed officials to make sure that public education works (i.e. students learn to their intellectual capacity), and,

- the state statutory and judicial setting does *NOT* prohibit various forms of direct and indirect self-dealing or conflicts of interest with the school district which board members are elected to govern.

4. an early solution to the teacher hiring problem can be achieved by getting something new from the states in return for federal education monies.

Federal intervention here has precedents. The Congress has long recognized the need for a standing federal role in reminding the states of various kinds of fundamental responsibilities which the states have been unable to accomplish without federal supervision. Ensuring each citizen's right to vote in federal elections is a case and point.

With regard to public education, Congress took care at the outset to see to it that public education was funded by the states--recall the set asides of public lands for education, and Congressional scrutiny of the new states' constitutions to insure that access to a thorough and efficient education would be provided. Further, the Congress continues to spend federal monies for education of the poor in recognition that the states continue not to adequately address this problem.

My suggestion to you this morning is that the Congress express a federal interest in clarifying for the states that the problem they and their agents, local school boards, are to solve when they provide education is to ensure that students learn to their intellectual capacity, and that the ethical environment within which resource allocation decisions are made be free from conflicts of interest.

Also, based on my earlier experiences in structuring federal-state intergovernmental relations so they are free of fraud and abuse<sup>5</sup>, I suggest that federal education monies directed to the states and

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<sup>5</sup> In particular the State and Local Fiscal Assistant Act of 1972, commonly described as General Revenue Sharing.

their local school districts be spent under applicable state and local budgeting and accounting procedures.<sup>6</sup>

In my judgment there is a compelling federal interest, in return for federal funds, in:

1. the states adopting statutes which obligate elected school boards and their agents to positively state, through annual oaths of office, that each will only take such actions which further the learning of the students to the maximum of their intellectual capacity in their district;
2. the states adopting statutes which prohibit direct and indirect conflicts of interest and obligate elected school boards and their agents to positively swear to this;
3. the states adopting statutes which obligate elected school board members to disclose their personal tax returns, which be audited in conjunction with the aforementioned oaths of office in conjunction with single federal audits of school districts;
4. obligating that states and their local school districts to expend federal monies under applicable state budgetary and accounting laws (i.e. require they treat federal monies as their own tax monies and therefore appropriate them);

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<sup>6</sup> A little over a quarter of a century ago, the original Congressional enactment of General Revenue Sharing, which I was directly involved in, obligated state and local governments, faced with unfettered federal block grants, to spend them under applicable state and local law. Requiring state and local appropriations had the salutary effect of eliminating much of the abuse that had accompanied state and local spending in other federal grant programs.

Convinced that such process requirements could prove valuable in other areas of federal grants-in-aid, I tried then to persuade Jack Jennings of this Committee's staff of the wisdom of this approach to federal grants-in-aid. Evidently, the Committee was not then ready to ask their state counterparts to follow more demanding federal process requirements.

I was pleased that the final welfare reform bill passed several years ago adopted the above strategy of providing both greater flexibility to the states but also ensuring that existing state safeguards in the use of federal monies be the same as in the use of state tax dollars.

When the Congress insisted in 1976 that renewal of General Revenue Sharing a few years later carry with it stronger non-discrimination obligations, mechanisms were enacted which automatically cut off funding with date certain to recipient governments if a finding of discrimination was substantiated. Finally, accounting requirements were put in place which required recipient state and local governments to be audited under GAAP, and foreshadowed federal

5. the states adopting statutes which obligate each district to elicit from parents their preferences for their children's teachers, e.g. enable parental choice of classroom teachers

Undoubtedly my emphasis on reverse engineering the teacher quality problem, and suggesting that you obligate the states to adopt a new framework within which they expend federal funds are likely to grate on my friends in the state and local sector, and my friends in public education as well. However, I am hard-pressed to understand how else the federal government can rebuild the public trust in a Jeffersonian democracy that has, in my view, largely gone amuck.

My remarks are organized as follows: Section 2 identifies background information which points towards focusing on the hiring decision as the crucial ingredient in meaningful school reform; Section 3 makes these assertions more concrete by displaying evidence I have developed with regard to Pennsylvania over the past several years for the Pennsylvania State Board of Education. Section 4 reviews the statutory and judicial setting in 30 states which govern school board ethical conduct; and Section 5 discusses the mechanisms by which the federal interest in improved teacher quality can be expressed.

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implementation of the single federal audit requirement. Thus, there is ample precedent in my view for strong federal process requirements which go with greater state and local flexibility.

## 2. Some Initial Facts about Prospective Teachers, and Teacher Certification Requirements

In order to motivate my focus on the hiring decision, let me first bring to light some facts about some of the characteristics of those interested in teaching, and what they have to do to become certified as a classroom teacher in order to be legally hired. Section 3 fills in these details with Pennsylvania data.

1. the scholastic aptitude (SAT scores) of those intending to become classroom teachers, and those who do become teachers, has been around the 35<sup>th</sup> percentile of those taking the SAT test, and about the 35<sup>th</sup> percentile of employed college graduates respectively; (See Figure 1 from ETS data)<sup>7</sup>; these scores raise questions in my mind about the likely efficacy of professional development programs for teachers midway through their teaching career and already tenured;
2. 2/3 of the high school seniors thus have higher scholastic aptitude than did those currently teaching them on average; this has to be demoralizing or worse for 2/3 of the students; (Again, see Figure 1);
3. if you throw a dart at the SAT distribution, you will likely hit the 50<sup>th</sup> percentile or the center of the bell curve; the major proprietary test preparation services, such as Kaplan Learning Systems, require as a matter of policy that their instructors score at or above the 90<sup>th</sup> percentile in the test they are preparing their students for;<sup>8</sup>

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<sup>7</sup> See Schlechty and Vance(1983), Vance and Schlechty(1982), Schlechty and Vance(1981 and 1982), Weaver(1983), Manski(1987), and Hanushek and Pace(1995) among others; they document that the odds of becoming certified as a teacher are inverse with academic ability, variously measured.

<sup>8</sup> Contrast this with a Long Island, New York district's experience that 60% of the teaching applicants failed (let alone scored in the 90<sup>th</sup> percentile) the New York Board of Regents Examination as reported by the *New York Times*.

4. the erosion of occupational segregation by sex and race has meant that academically talented women and minorities go into occupations other than teaching today;
5. there is evidence that teachers who score higher themselves on various tests of general and subject knowledge are also those whose students score higher on competency and achievement tests, holding constant the socioeconomic background of the children and parents;<sup>9</sup>
6. academic and test score requirements to become certified in most states are extremely low so that typically 90% pass<sup>10</sup>; this contrasts markedly with accounting and law certification requirements in which less than 50% pass, or European standards for teacher certification in which less than 30% pass subject matter tests; and,<sup>11</sup>.
7. there is systematic evidence that many local school districts do not hire the most academically qualified applicants<sup>12</sup> and many do not utilize professional personnel procedures when selecting among applicants.<sup>13</sup>.

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<sup>9</sup> See Strauss and Sawyer(1986), Ferguson(1991), and Ehrenberg and Brewer(1994).

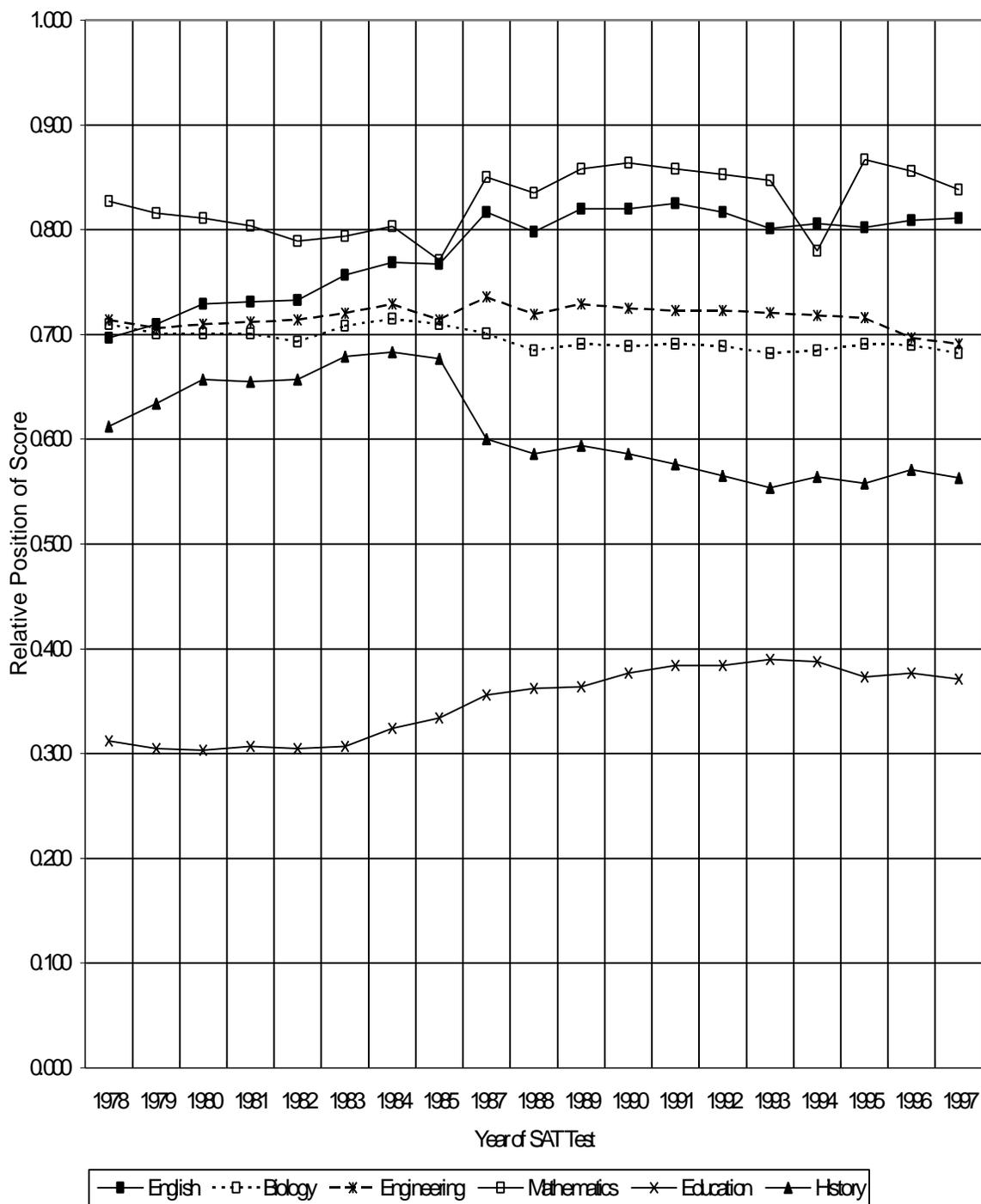
<sup>10</sup> See Strauss, *et al*(1998)

<sup>11</sup> See Bishop(1996)

<sup>12</sup> See Ballou and Podgursky(1995), Ballou(1996), Ballou and Podgursky(1997),

<sup>13</sup> See Strauss, Bowes, Marks and Plesko(1999)

**Figure 1**  
 Combined SAT Scores by Intended Major  
 Relative Position of SAT Scores



### **3. Some Pennsylvania Evidence on Teacher Quality and the Results of the Teacher Hiring Decision**

#### **A. Passing Scores and Percent Correct on ETS Praxis Tests**

Most states independently measure general and specific knowledge of prospective teachers through the administration of competency examinations. ETS historically sold the National Teacher Examination (NTE) to 34 states, and is replacing it with the Praxis examinations. Table 1 displays examinations that ETS offers<sup>14</sup>, and the two biology tests which prospective biology teachers in Pennsylvania must take, along with the required passing scores as of 1998.<sup>15</sup>

The range of standardized test scores varies. Some range from 300 to 335, others from 250 to 990, and others from 100-200. It is important to recognize that if one guesses on any of these exams, there is no penalty. That is different than the SAT test, where guessing wrong leads to points being subtracted from the initial score.<sup>4</sup>

Let us take a close look at the Core Battery Reading and Writing tests. To pass Reading, one needs a score of 309, while to pass Writing one needs a score of 311. Next, let us compare the number of points needed to pass compared to those that one can possibly earn. Take the passing score (309), and subtract out the bottom range ( $309-300=9$ ) and divide this result by the points available to earn ( $335-300=35$ ); this is the percentage of questions of average difficulty one must correctly answer to pass the test.

In the case of the Core Battery Reading test, the 309 translates into  $9/35$  or 25.7%. So, to pass the basic reading test, on the way to earning a teaching certificate in Pennsylvania, the prospective teacher has to correctly answer 25.7% of questions of average difficulty. Pennsylvania's Core Battery Test passing score in

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<sup>14</sup>.Note that Pennsylvania does not require prospective teachers to pass a Core Battery Test in math, although most other states do.

<sup>15</sup> In 1998, in part due to the discussion that follows in the text, Pennsylvania changed its test requirements and generally raised passing scores.

Writing is 311 out of 335, so a prospective teacher must correctly answer 31.4% of questions of average difficulty.

**Table 1**

**Passing Core Battery Test (CBT) and Biology Test Scores for  
Biology Teaching Candidate in Pennsylvania, 1998**

<b>Standardized Test</b>	<b>Test Score</b>	<b>Passing</b>	<b>%</b>	<b>National</b>		
	<b>Range</b>	<b>Score</b>	<b>To Pass</b>	<b>Actual 25'th%</b>	<b>Score Median</b>	<b>Distribution 75'th %</b>
CBT Reading	300-335	309	25.7%	324	325	331
CBT Writing	300-335	311	31.4%	320	323	326
CBT Math	300-335	NA	NA	319	324	329
CB Communications	250-990	646	53.5%	654	661	668
CB Gen Knowledge	250-990	644	53.2%	650	657	664
CB Prof Knowledge	250-990	643	53.1%	655	663	670
Biology Knowledge 1	100-200	144	44.0%	168	169	179
Biology Knowledge 2	100-200	135	35.0%	135	148	160

Source: Pennsylvania Department of Education, ETS, author's calculations. According to ETS, effective September 1, 1999, Pennsylvania's scores for Biology 1 and 2 will be respectively 156 and 137.

To put these two percent correct figures in further perspective, note that the national distribution of Praxis Core Battery Reading scores indicates that a 324 was at the 25'th percentile; this 324 translates into answering correctly 68.6% ( $24/35=68.6\%$ ) of questions of average difficulty, and is the passing score required by Virginia. The 25'th percentile of the national distribution of Praxis writing scores was 320 out of 335 so a prospective teacher needs to answer correctly 57.1% ( $20/35=57.1\%$ ) of questions of average difficulty to be at the 25'th percentile; this was also Wisconsin's passing score and is almost twice that of Pennsylvania.

Pennsylvania only began requiring the Praxis Core Reading tests in 1997 so data are not available on actual test results. However, why a panel of experienced teachers in Pennsylvania believed that Pennsylvania teaching candidates need correctly answer 25.7% of the reading questions of average difficulty, or answer correctly 31% of the writing questions of average difficulty, when experts in other

states think their prospective teachers should correctly answer better than twice as many reading questions and nearly twice as many writing questions is an important educational policy question for Pennsylvania.

If Pennsylvania school districts hire teachers with Praxis reading and writing scores at *just* passing levels, which they are legally permitted to do, it is difficult not to reach the conclusion that these new hires are likely not able to read or write effectively. This then raises a very serious question about how children in the classroom might be expected to learn how to read or write from teachers who have reading and writing difficulties themselves.<sup>16</sup>

### **B Teacher Exam Scores in Pennsylvania by Approved Teacher Preparation Program**

While there is periodic national discussion of a historic or pending teacher shortage, Pennsylvania has always awarded far more teaching certificates than public school districts have hired. Over the last 15 years, Pennsylvania has annually employed about 100,000 classroom teachers; about 39,800 are elementary school teachers. On the other hand, over the period 1990-97, 39,000 *new* elementary teaching certificates were awarded. The rate of teaching certificate production is now on the order of 20,000/year, while less than 2,000 inexperienced teachers have been hired.. Since the 1960,s Pennsylvania's schools of education have produced better than ½ million teacher certificates, while only about 100,000 are annually employed. A natural question to ask is what does this emerging army of new teachers demonstrate on standardized subject matter knowledge tests?

Table 2 shows the *range* of the ETS National Teacher Exam (NTE) scores for nine subject areas, and displays the name of the college or university which had the highest median NTE score and the lowest median NTE score for each of the nine content areas. The table also translates the high and low median NTE scores into percent correct answers of questions of average difficulty. With regard to the top scores, four

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<sup>16</sup>.This could readily explain why nationally employers find they must retrain employees. Surely such low passing reading scores for teachers can be directly translated into adverse business location decisions. The interested reader can find in Strauss(1998), Table 6.3 and 6.4, these calculations for all of the Praxis examinations and the passing scores for eight states.

private colleges (Swarthmore (3), Lafayette (3), Chatham (2), and Bryn Mawr(1), shared the honors for having the highest median NTE scores. Translated into percent correct, the highest scores ranged from 63.5% correct in chemistry to 84.5% correct in English.

With regard to the lowest median NTE scores in the nine subject areas, they occurred among six institutions (Cheyney(3), Holy Family(1), King's College(1), Lincoln(1), Ursinus(1), Waynesburg(2)), and the range of percent correct was from 4.7% in physics to 43.2% in elementary education. Remarkably, if one correlates the employment rate<sup>17</sup> of each institution by NTE subject area with the institution's students' median NTE score, there is no reliable relationship<sup>18</sup> except for mathematics (+.24) and chemistry (-.26!). A positive correlation indicates that actual hiring tends to be greater from approved programs with higher NTE mathematics scores, and a negative correlation indicates that actual hiring tends to be greater from approved programs with *lower* median scores. This finding for chemistry and physics underscores the harsh reality that when no standards were imposed during 1987-97---anyone who *took* the chemistry or physics exams became certified in them as long as they *passed* the core battery tests--- school districts were very careless about whom they hired.<sup>19</sup>

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<sup>17</sup>.The employment rate was measured by taking, by NTE subject area and certificating institution, the ratio of certificate aspirants with a known NTE score ever employed in a Pennsylvania school district or intermediate unit to the total number of certificate aspirants with known NTE score.

<sup>18</sup>.See Strauss(1998), Tables 7.8-7.11 and 7.12.

<sup>19</sup>.To be sure, one can also argue that the economic opportunities for chemists are greater outside of teaching, so that districts were unable to find chemistry teachers but for those from programs which had very weak results. On the other hand, these data also show the effects of artificially limiting supply by insisting that would-be chemistry teachers be immersed in teaching methods courses, the core activities of many education schools, to the exclusion of taking actual chemistry courses. In any event, the data show that programs with weak chemistry aspiring teachers got more of them hired in Pennsylvania school districts than those with strong chemistry aspiring teachers.

**Table 2****Teacher Test Scores in Pennsylvania by College or University  
Median National Teacher Exam Scores (1987-97) in 9 Specialty Areas:**

[1]	[2]	[3]	[4]	[5]	[6]
<b>Specialty Area</b>	<b>Number of Programs</b>	<b>Top Program</b>	<b>1998 Passing Score</b>	<b>Top Program's Median NTE</b>	<b>% Correct Of Median</b>
Elementary	79	Lafayette	570	710	62.2%
Mathematics	79	Swarthmore	540	740	66.2%
Chemistry	64	Chatam	500	720	63.5%
Biology	77	Lafayette	580	> 800	>74.3%
Physics	50	Swarthmore	440	810	75.7%
General Science	64	Chatham	None	> 740	>66.2%
Earth and Space	32	Lafayette	570	> 800	74.3%
English	78	Swarthmore	490	875	84.5%
Social Studies	79	Bryn Mawr	580	685	58.8%
<b>Specialty Area</b>	<b>Number of Programs</b>	<b>Bottom Program</b>	<b>1998 Passing Score</b>	<b>Bottom Program's Median NTE</b>	<b>% Correct Of Median</b>
Elementary	79	Ursinus	570	< 570	<43.2%
Mathematics	79	Cheyney	540	500	33.8%
Chemistry	64	Waynesburg	500	380	17.6%
Biology	77	Cheyney	580	355	14.2%
Physics	50	Lincoln	440	285	4.7%
General Science	64	Holy Family	none	520	36.5%
Earth and Space	32	King's College	570	<350	<13.5%
English	78	Cheyney	490	580	44.6%
Social Studies	79	Waynesburg	580	550	40.5%

Source: author's tabulations of NTE scores in Pennsylvania.

**C. Teacher Exam Scores of Employed Teachers by Pennsylvania Metropolitan Area**

It is not surprising to find that teacher preparation programs vary widely in what their graduates know about the subjects they wish to teach, for they vary widely in their admissions standards, curricula requirements, expense, and faculty. For children and their parents, the remaining issues are: who winds up in front of the children, what do they know, and how does it affect the children's learning?

Because Pennsylvania school districts typically do not hire teachers from teacher preparation programs more than 70 miles from the district<sup>20</sup>, it makes most sense to examine the NTE scores of employed teachers by groups of school districts by Metropolitan Statistical Area (MSA). Table 3 shows across the Census

<sup>20</sup>Strauss (1993), Table 5.2.

Bureau's Metropolitan Statistical Areas (MSA's), just how variable the knowledge of employed school teachers is. In the Allentown MSA there are 22 school districts. If we tabulate their median mathematics NTE score, the district whose teachers had the highest score had a 760 out of 990, or correctly answered 68.9% ( $510/740=68.9\%$ ) of questions of average difficulty. The school district with the lowest median mathematics NTE score in the Allentown MSA had a 540 (the minimum passing score under state regulations) or correctly answered 39.2% of questions of average difficulty.

In biology, the district with the highest median biology NTE<sup>21</sup> scored 910 out of 990 or correctly answered 89.2% of questions of average difficulty, while the bottom district's median NTE score was 580 or correctly answered 44.6% of questions of average difficulty. It is difficult to imagine that students exposed to a teacher with literally one half the content knowledge of another would be getting the same biology education.

If one carefully examines Table 3, one sees that in chemistry and physics, districts hired teachers with very little subject knowledge. Somewhere in the Lancaster MSA, a physics teacher was hired who scored 360 out of 990 on the NTE physics test. This translates into answering correctly 14.9% of questions of average difficulty. This occurred, as noted above, because the state failed to set passing scores for 10 years in chemistry and physics, and certified anyone who simply took the exam and passed the core battery tests.

In view of the wide variations in the results shown by employed teachers on standardized tests, we might ask, what is happening? Is the variation due to inadequate salary levels or large variations in district wealth?<sup>22</sup>

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<sup>21</sup>Note that the biology test range under NTE is 250-990 while under Praxis it is 300-335.

<sup>22</sup>I encourage the reader to look carefully at Table 3 and wonder along with me why advocates for school finance equity have not focused on these types of results rather than just on per-pupil spending.

**Table 3**

**Employed Classroom Teacher Content Knowledge:  
Highest and Lowest District Median NTE Scores  
by Pennsylvania Metropolitan Statistical Area**

		MSA's	MSA's	MSA's	MSA's
		High & Low	High & Low	High & Low	High & Low
	Number	NTE Score	NTE Score	NTE Score	NTE Score
MSA	of Districts	Mathematics	Biology	Chemistry	Physics
Allentown	22	760-540	910-580	530-390	640-540
Altoona	7	610-560	660-620	720-690	NA
Beaver	15	720-540	750-725	590-470	700-410
Erie	13	650-580	790-610	560-490	460-380
Harrisburg	29	720-570	900-630	690-460	650-430
Johnstown	23	760-570	720-490	560-490	700-460
Lancaster	16	800-620	860-630	710-520	660-360
Philadelphia	62	850-560	825-600	770-440	820-460
Pittsburgh	80	730-510	860-480	770-415	740-380
Reading	18	730-510	780-620	640-530	NA
Scranton	33	710-560	810-390	NA	520-380
Sharon	12	790-590	750-675	600-450	NA
State College	4	800-640	840-690	NA	NA
Williamsport	8	650-550	NA	NA	NA
York	21	840-570	755-590	685-550	660-450
Non-MSA	137	800-540	910-570	910-390	645-450

Source: authors' calculations with NTE test scores in Pennsylvania.

If one looks closely at the NTE scores of elementary teachers hired, one can find examples of rich districts being selective and hiring elementary classroom teachers with high NTE scores, rich districts hiring elementary teachers with low NTE scores, as well as examples of poor districts hiring elementary classroom teachers with high NTE scores, and poor districts hiring elementary classroom teachers with low NTE scores.<sup>23</sup>

<sup>23</sup>See Strauss, *et al* (1998), Table 7.14. This may explain why researchers have such difficulty demonstrating that higher spending is associated with greater student achievement--undisciplined hiring practices lead to highly variable student achievement results.

#### **D. Characteristics of the School Personnel Decision in Pennsylvania**

The second issue that arises when examining the test scores of employed teachers is the nature of the personnel process itself. In the Spring of 1997, in conjunction with my research for the Pennsylvania State Board of Education, a survey instrument was designed, and field-tested to elicit the ways by which local school districts go about hiring classroom teachers.<sup>24</sup> The State Board of Education wrote each Superintendent, School Board President, and union president asking for their cooperation in filling out the 14 page questionnaire. Confidentiality was guaranteed, and each stake-holder was told that the others were receiving the same questionnaire.

The following major points emerge. Many school districts do not widely recruit new teachers. Often, they simply hire those whom they know best, their recent high school graduates. In an average Pennsylvania school district, about 40% of current teachers in the district obtained their high school diploma or attended high school in the district where they work;

Pennsylvania does not have statutory advertising or recruiting requirements. Only Pittsburgh and Philadelphia are required to hire from lists. An employment offer, however, does require (as is the case in virtually all states) an affirmative vote of the local school board. Remarkably, only 49% of the districts have written hiring policies;<sup>25</sup>

Only 25% of the districts advertise teaching openings outside of Pennsylvania; about 83% advertise outside their district; the major forms of advertising are Pennsylvania School Boards Association Bulletin, word of mouth, bulletin boards in the district, education schools placement offices, and the local newspaper;

Local personnel processes typically do not spend much time with applicants. A typical interview lasted less than one hour; only 44% of the districts used more than one interview team to interview applicants; only 27% of the districts reported using a sample classroom presentation as part of the initial evaluation

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<sup>24</sup>.Several superintendents and a member of the Pennsylvania State Board of Education helped devise the questions in the questionnaire, some of which sought to elicit procedures, practices, and emphases in the hiring process which are consistent with nepotism models of teacher hiring.

<sup>25</sup>.This result compares favorably with Cooley(1995).

process, while 36% require a sample classroom presentation if a second interview is required.

Teacher preparation institutions in Pennsylvania have not actively sought to place their graduates. Only 52% of the districts report being contacted by a teacher preparation program regarding openings.

About 1/3 of districts fill full-time openings from substitutes or part-time teachers whom they already know; 14% of full time positions are filled from internal transfers within the district; Districts generally received more than five applications for each vacancy, including, on average 50 applications for each elementary opening.

The glut of new elementary school teachers is well known in the field: 90% of the districts reported that some certification areas were easy to recruit (elementary was mentioned by 74% of the districts); 78% of the districts reported that some certification areas were difficult to recruit (14% mentioned physics, 17% mentioned foreign language).

One in five districts reported requesting waivers from the Department of Education and 65% (of those requesting) obtained a waiver; only 27% of those requesting waivers stated that a waiver was requested because applicants were not fully qualified.

The most influential factors used to narrow the paper applicant pool are: major in area of teaching, overall grade point average and grade point average in major, past performance in teaching, and references or recommendations; Independent evidence on content knowledge and caliber of certifying institution was about as important in recruiting as indications of community involvement, willingness to assist in extracurricular activities, and non-teaching work experience.

In 2/3 of the districts, the school superintendent and building principal determine who moves from the interview list to the narrowed applicant pool; 21% of the districts report that school board members participate in this narrowing process, and only 12% report that other teachers participate in the narrowing process while 17% report that the department head participates in the narrowing process. In the case of hires in late summer before the start of the new school year, 1/3 of the positions offered were for full time contract positions; current substitutes are first offered such positions in 28% of the cases; 83% of the districts do not

use a separate personnel process for late hires.

#### **E. Student Performance and the Personnel Process**

It is probably not surprising to find that districts with more professional personnel procedures are also districts whose students test at grade level, and score higher on student achievement tests.

<sup>26</sup> If we focus on the measure of hiring insularity, the percentage of a district's teaching staff drawn from its own graduates, we find it can be explained statistically by the unemployment rate in the area. (See Table 4). In turn, such a preference for one's own graduates is associated with lower student achievement and testing below grade level. These relations are not only statistically significant, they are also large. A 1% relative increase in an area's unemployment rate is associated with a .4% increase in the fraction of teachers hired who were educated at that district. In turn, a 1% relative increase in such home grown teachers, holding constant the fraction of students who are from poor families, is associated with a .7% relative increase in the fraction of students testing *below* grade level. (See Table 5).

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<sup>26</sup> See Strauss, *et al* (1998), Section 8.2

**Table 4: Effects of Unemployment and Parental Education on Hiring Insularity of Pennsylvania School Districts in 1990's (t-ratio)**

Equation 1	Constant	Log <sub>e</sub> Unemployment Rate	Log <sub>e</sub> % Adults with BA +	R <sup>2</sup>
Log <sub>e</sub> (% Teachers from HS)	3.2737 (6.00)	0.4481 (2.94)	-0.2889 (-2.04)	0.1251

Source: Strauss, Bowes, Marks and Plesko (1999).

**Table 5: Two Stage Least Squares Estimates of Achievement and Competency Equations (t-ratio)**

Achievement Measure of Output	Constant	Log <sub>e</sub> Predicted % Teachers from HS	Log <sub>e</sub> % Kids from AFDC Families	R <sup>2</sup>
(1)	(2)	(3)	(4)	(5)
Log <sub>e</sub> % Students with Post- Secondary Plans	1.5362 (6.54)	-0.6732 (-8.84)	0.1376 (5.35)	0.2937
Log <sub>e</sub> PSSA Math 5'th Grade	7.4992 (167.65)	-0.0955 (-6.25)	-0.0019 (-0.39)	0.4677
Log <sub>e</sub> PSSA Math 8'th Grade	7.5193 (163.43)	-0.1002 (-6.38)	-0.0105 (-2.08)	0.5796
Log <sub>e</sub> PSSA Math 11'th Grade	7.5657 (124.66)	-0.1166 (-5.62)	-0.0139 (-2.09)	0.5331
Log <sub>e</sub> PSSA Reading 5'th Grade	7.4796 (144.33)	-0.0815 (-4.60)	-0.0144 (-2.54)	0.4930
Log <sub>e</sub> PSSA Reading 8'th Grade	7.5744 (172.38)	-0.1202 (-8.01)	-0.0027 (-0.57)	0.5942
Log <sub>e</sub> PSSA Reading 11'th Grade	7.5322 (108.14)	-0.1070 (-4.50)	-0.0076 (-1.01)	0.3704
<b>Competency Measure of Output</b>				
Log <sub>e</sub> Tells Competency Math % Below 3'rd Grade	-0.0423 (-0.07)	0.7284 (3.26)0	0.0609 (0.85)	0.2485

Achievement Measure of Output	Constant	Log <sub>e</sub> Predicted % Teachers from HS	Log <sub>e</sub> % Kids from AFDC Families	R <sup>2</sup>
(1)	(2)	(3)	(4)	(5)
Log <sub>e</sub> Tells Competency Math % Below 5'th Grade	0.9512 (1.46)	0.4229 (1.91)	0.1122 (1.58)0	0.1889
Log <sub>e</sub> Tells Competency Math % Below 8'th Grade	0.8340 (1.61)	0.4463 (2.52)	0.1513 (2.68)0	0.3409
Log <sub>e</sub> Tells Competency Reading % Below 3'rd Grade	-0.1312 (-0.24)0	0.7544 (3.99)	0.0193 (0.32)	0.2716
Log <sub>e</sub> Tells Competency Reading % Below 5'th Grade	0.2834 (0.63)	0.7170 (4.69)	0.0735 (1.51)	0.4273
Log <sub>e</sub> Tells Competency Math % Below 8'th Grade	0.6185 (1.31)	0.5862 (3.63)	0.1072 (2.08)	0.3855

Source: Strauss, Bowes, Marks, and Plesko(1999).

Note: Predicted % from own High School from Equation 1 above, e.g. 2SLS.

## 4.State Laws Governing School Board Conduct and Ethics in 30 States<sup>27</sup>

### A. Tension between Local and State Control

The dual control over the local school district by the local school board and the state through the state board of education, or state department of education, is a fundamental tension in school governance structure.

Two sources of tension underlying the issue of local control of education are evident. The first involves questions of “educational competency” and the second questions of “political competency.” Educational competency includes those questions and doubts about the ability of locally elected officials to manage schools. State laws suggest that legislators are often not certain that local school board members are capable of making important decisions about local schools. An explicit distrust in the professional competence of the local school board member creeps into the statutes and case law. For example, the teacher tenure provisions adopted in Michigan place severe limitations on the local school board’s ability to terminate a teacher. These changes were explicitly advocated as necessary to limit the power of the school board to commit “abusive employment practices” and to prevent the “arbitrary and capricious” exercise of power by the local school board.

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The question of political competency is more fundamental to the role of the school board member *as an elected official*. Here, one observes in state laws either a question of whether the state legislature can trust the local school board to act in the best interests of the children, or an ambiguity about whether or not a state wishes to raise a question about the nature of the stewardship compulsory attendance laws creates.. Can we count on them to fulfill their duties of supervision with only, or at least primarily, the motive of improving the quality of education in the local school? This second tension is, of course, fundamental to all elected offices in our democracy. Below, I look more closely at the issue of school board member self-interest and various laws designed to limit acting in pursuit of a personal, rather than a public, interest.

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<sup>27</sup> This section is based on Kolb and Strauss(1999), Section IV-VI. The following states were not included in the review: Arizona, Arkansas, Connecticut, DC, Idaho, Kentucky, Louisiana, Maryland, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Washington, and West Virginia.

<sup>28</sup>See, *Goodwin v Board of Education*, 82 Mich App 559, 267 NW2d (1978)

## B. Requirements and Qualifications for Election

Local school board members are usually elected officials.<sup>29</sup> While the structure of local districts varied widely within states, election requirements and qualifications are set on a statewide basis by the legislature. It is generally unlawful or unconstitutional for a local district to exclude a candidate for school district office by adding to these requirements.

Requirements for the office of school board are minimal. In many of the states surveyed, the fundamental requirement is that the candidate be a registered voter. Since voting requirements generally include being 18 and establishing residency in the district (often a 30-day requirement) these provide the bare minimum qualifications. Some states have a one-year residency requirement.<sup>30</sup> Many states prohibit holding “incompatible offices” or “dual offices.”<sup>31</sup> These provisions prohibit a person from holding two elected or public offices if the duties of the two offices would be in conflict. Many states require financial disclosure and campaign finance disclosure of all candidates for elected office.

Only three of the states surveyed have any requirement related to basic competencies. New York and New Jersey require that school board members be able to read and write, and Alabama requires a “fair elementary education.”<sup>32 33</sup>

A few states limit school board membership based on the commission of certain crimes. In some states, convicted felons are unable to vote or stand for election until the applicable fine or incarceration is completed. A few states specifically mention convicted felons as being unqualified

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142, *Andersen v Board of Education*, 73 Mich App 33, 250 NW2d 786 (1976).

<sup>29</sup> Most school boards are elected, although three percent — mostly in big cities — are appointed by city councils or mayors. *The School Reform Handbook: How to Improve Your Schools*, Section II, Chapter 6. Available online at <http://www.edreform.com/info/srhch6.htm>

Note that in a number of recent instances, authority over previously politically and fiscally independent schools was ceded to an elected mayor and from elected local school boards in: Boston, Cleveland, Detroit, and Washington, D.C.. In Chicago, the schools were more completely integrated into the administrative control of the City through state legislation.

<sup>30</sup> See, e.g., Colorado, Florida, Illinois, Indiana, New Jersey, New York and Virginia

<sup>31</sup> See, e.g., Va. Code Ann. § 2.1-37.01 which prohibits holding dual offices, or HRS § 13-2 and discussion of “incompatible offices” in applicable Attorney General Opinions. See, also, MSA § 15.1120(123) (1998) The state of Michigan incorporates the principle of incompatible offices in its statute. The general interpretative test is whether the two entities will negotiate or contract with one another. If yes, then the offices are incompatible.

<sup>32</sup> N.J. Stat. § 18A:12-1, NY CLS Educ § 2102, Code of Ala. § 16-8-1

<sup>33</sup> Additionally, a state may refer to a “mental competency” requirement for public service and would exclude candidates unable to serve due to mental illness or incapacity.

to serve as school board directors.<sup>34</sup> Georgia excludes persons convicted of crimes involving “moral turpitude,”<sup>35</sup> and Iowa excludes felons or persons convicted of “other infamous crimes.”<sup>36</sup>

Only three of the thirty states have a requirement related to the morals of the candidate. Pennsylvania requires persons to be “of good moral character.”<sup>37</sup> North Carolina states that persons may be removed if guilty of “immoral or disreputable conduct.”<sup>38</sup> Alabama requires that its candidates “shall be persons of good moral character, with at least a fair elementary education, of good standing in their respective communities and known for their honesty, business ability, public spirit and interest in the good of public education.”<sup>39</sup> In contrast, it is not unusual for states to place some type of moral requirement on teaching candidates. For example, in Florida the qualifications for any position in a school system include good moral character.<sup>40</sup> These types of “morality requirements” are deemed essential for teachers. A North Carolina court stated:

“Teachers who are entrusted with the care of small children and adolescents are intended by parents, citizenry and lawmakers alike to serve as good examples for their young charges. Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil.”<sup>41</sup>

While North Carolina extends its expectations to its school board members also, most states do not. In summary, many states have only voting and residency requirements while the remaining states have a variety of minimal qualifications. None of the thirty states reviewed exclude candidates from the elected office of school board based on qualities or competencies necessary for

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<sup>34</sup> See, e.g., Iowa, Indiana, Georgia and Texas.

<sup>35</sup> Black's Law Dictionary, Revised, Fourth Edition, defines moral turpitude as: "An act of baseness, vileness, or depravity in the private and social duties which man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man."

<sup>36</sup> At common law a person convicted of an "infamous crime" was not even permitted to testify. See 2 Wigmore on Evidence, §§ 519-520 (3d ed.); McCormick on Evidence, § 43 at 89 (1954).

<sup>37</sup> A disqualified candidate might make an argument based on “vagueness.” Further, it is not clear how a local election official would determine whether to strike a candidacy for failing to meet this provision.

<sup>38</sup> N.C. Gen. Stat. § 115C-39 (1997). Although grounds for removal and not a requirement for election, it is included here as one of the few states reviewed which had any mention of moral conduct requirements. Other states may have provisions for removal for certain “misconduct” which could be “moral” in nature.

<sup>39</sup> Code of Ala. § 16-8-1.

<sup>40</sup> Fla. Stat. 231.10, 231.17(3)(c) (6).

<sup>41</sup> *Faulkner v. New Bern-Craven County Bd. of Educ.*, 311 N.C. 42, 316 S.E.2d 281 (1984) ruling on dismissal of teacher for excessive and habitual use of alcohol.

school supervision. Generally, it is assumed that voters are in the best position to evaluate the qualifications of candidates for elected office.

### C. School Board Service and Salary

Once elected, school board members are required to take an oath of office. This oath of office is usually generic to all elected officials within the state and requires “the faithful performance of all duties” or some similar statement, and a promise to uphold the state and federal constitution and laws.<sup>42</sup> School board members may be removed from office for various reasons including failure to attend meetings or misconduct.<sup>43</sup>

Some states require new school board members to attend mandatory training,<sup>44</sup> while other states provide for a voluntary program of training.<sup>45</sup> Many states provide for membership in state and national school boards associations and refer to these organizations for school board member training.<sup>46</sup>

Of the thirty states reviewed, only four states provide more than a nominal salary and twelve states do not provide any type of payment for the services of school board members.<sup>47</sup> Some states specifically prohibit the payment of a salary, while others leave it up to local district practice. In those states allowing payment, usually the payment was nominal. For example, a payment of \$25.00-\$50.00 per meeting or \$50.00-\$100.00 per day was allowed in some states.<sup>48</sup> Given that meetings and days are several hours long, and no provision is made for preparation time, the resulting pay is low.

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<sup>42</sup> See Appendix 1 for reproductions of school board member oaths of offices in selected states.

<sup>43</sup> For example, Illinois allows removal for a “willful failure” to perform their duties. See § 105 ILCS 5/3-15.5. For a review of removal of candidates from office, *see*, Dolores M. Nagy, “An analysis of court decisions involving the election, title to office, performance and removal of local public school directors.” University of Pittsburgh, 1981. Taking bribes or other clearly unethical conduct would likely constitute grounds for removal from office.

<sup>44</sup> See, e.g., Georgia which requires mandatory training within first year. O.C.G.A. § 20-2-230

<sup>45</sup> See, e.g., Ala. Code § 16-1-6 School board member training may also be required or implemented on the local level even if it is not specifically authorized or required by state statute. Generally, a training program would be well within the general governance authority of a local government unit.

<sup>46</sup> See, e.g. Utah Code Ann. § 53A-5-101

<sup>47</sup> See Table of Results, column 6

<sup>48</sup> For example, Maine allows \$25.00-\$50.00 per meeting depending on local practice, Georgia allows \$50.00 per day while \$100.00 per day is permitted in Hawaii. In South Carolina the local district sets the per diem allowance. Vermont allows a small sum, for example \$500, for each entire year’s service depending on local practice.

Of the states surveyed, only Indiana, Florida, Utah and Virginia provide significant payment for services. Indiana permits a payment of \$2,000 plus a per diem set by local practice.<sup>49</sup> Virginia and Florida provide salary ranges tied to the size of the school districts. In Virginia, the lower range amounts are comparable to Indiana and many districts pay less than \$5,000. However, a number of districts provided payments in the \$5,000-10,000 range with salaries reaching as high as \$12,500.<sup>50</sup> Florida's base range is from \$5,00-10,000 and up.<sup>51</sup> The salary ranges may be increased periodically.

Most states specifically allow members to be reimbursed for expenses, although local practice determines the type of reimbursement permitted. In those states that do not include a specific provision permitting expenses, it is never prohibited by statute and it is likely that these items could be included in the local district budget.

In conclusion, requirements for election are minimal and mirror those of other elected officials within the state. Generally, school board members are expected to serve for nominal or no pay, although expenses are reimbursed. In some states, various provisions require financial disclosure, campaign finance disclosure and adherence to ethical standards.

#### **D. Limitations on Board Member Relationships with the School District**

Next, let us turn to the more problematic issue of how state laws attempt to supervise and limit the conduct of school board members to assure that they govern the district fairly.

Fundamental to the role of any elected official is the requirement that they act in the public interest. This notion of elected officials deliberating for the good of the public is at the heart of our democratic system of government. In the *Federalist Papers*, Madison extolled a form of government with an autonomous public authority that was larger than the sum of the private interests clamoring for power. Although arguably elitist, the Framers envisioned a form of government where thoughtful and caring citizens carefully deliberated about the issues before them. In this view, the public chooses a body of citizens to become a "disinterested and passionate umpire in disputes between different passions and interest in the State."<sup>52</sup> Thomas Burke described

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<sup>49</sup> Ind. Code 20-5-3-6.

<sup>50</sup> See Va. Code 22.1-32.

<sup>51</sup> Fla. Stat. 230.202.

<sup>52</sup> Gordon S. Wood, *The Radicalism of the American Revolution*, 253 (Alfred A. Knopf, 1992) (this quote is from a letter to Edmond Radolph, dated April 8, 1787 from the Papers of Madison, IX, 370, 384).

the ideal of the elected body as one which will “refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.”<sup>53</sup>

Fundamental to this notion of an elected body which can discern and act upon the “true interest” of the public, is the idea that these officials must be motivated by the good of the public and not their own personal self-interest. The public then, has a clear and paramount interest in structuring the relationship of the elected official to the public in a way that protects it from any considerations other than what is best for the public. The public also has an interest in promoting the public acceptance of government decisions by avoiding impropriety and even the appearance of impropriety in decision making.

Another view of the role of the elected official can be described as the representative or pluralist view of government. While the deliberative view of government posits the ideal of a separate and dispassionate group of elected officials who carefully and fairly deliberate among the competing interests brought before them, the pluralistic or representative view sees government as the result of competing interests negotiating for rights and privileges. In this view, elected officials are expected to act as representatives of the interests that enable them to get elected and re-elected. In this view, laws are not viewed as the result of deliberation, “but on the contrary as a kind of commodity, subject to the usual forces of supply and demand.”<sup>54</sup>

If government is seen more as the adjudication of competing interests, then the focus on limitations are ones that assure that there is no unfair advantage in promoting a particular view. This problem usually is thought to be solved by simply requiring officials to abstain from certain votes and requiring that all contracts be let in a competitive bidding process. The effect of influences which hamper an official’s ability to deliberate or the impact of actions on public perceptions of “fairness” are less central. Rather, this view recognizes that different participants in a democracy have different levels of power and influence and that these are inevitably reflected in the political process.

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<sup>53</sup> Thomas F. Burke, “The Concept of Corruption in Campaign Finance Law,” 14 *Const. Commentary* 127, Spring 1997, 143

<sup>54</sup> Cass Susstein, *Partial Constitution* at 24-25, as cited in Burke, *infra*, at 148.

Both of these descriptions are admittedly an over-simplification of a complex process which has been analyzed extensively in the development of American democracy ..<sup>55</sup> However, I believe that these different ways of viewing government help to understand the wide differences in how states treat the relationship of the school board member to the district. A deliberative view supports a broad range of limitations targeted at protecting the official from undue influence, but also focuses on protecting the public from a loss of confidence in the institution. Limitations are justified based on concerns for the individual and for the institution as a whole.

The pluralist theory points to a narrower range of limitations. First, the public perception of the institution and the “appearance” of impropriety are managed not by trying to control the conduct of the officials, but by mandating full and complete disclosure. Armed with information, the public is then free to make their preferences known at the ballot box. Thus, in this view, it hardly matters who gets the contract for goods or services, so long as the district receives the lowest price of agreed upon quality.<sup>56</sup> Accordingly, public bidding and procurement processes adequately protect the public.

It is likely that a hybrid system which uses disclosure, open processes *and* limitations designed to insulate board member from distracting influences or self-interest, can maintain public confidence in local institutions and promote and protect the public interest. With this in mind, two areas of school board activity are examined below to ascertain if they approximate this hybrid model: 1) the relationship of the school board member to the employees within the district, and 2) the relationship of the school board member to the various contracts entered into by the school district for materials and services. In many states, these statutes are not adequate.

## **E. Relationships with Employees within the District:**

### *Employment of Board Member in the District*

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<sup>55</sup> For example, another dichotomy used to describe different views and strategies for organizing government are the “moralist/idealist” views and the “realist” or “proceduralist” view. For a discussion of the limitations of the “moralist/idealist” view, see, Bruce E. Cain, *Moralism and Realism in Campaign Finance Reform*, 1995 *U Chi Legal F* 111. For a discussion of the concept of corruption and governance, see also, Arnold Heidenheimer, Michael Johnston, and Victor T. LeVine, eds, *Political Corruption: A Handbook* (Transaction Publishers, 1989); John G. Peters and Susan Welch, “Political Corruption in America: A Search for Definitions and a Theory,” 72 *Am Pol Sci Rev* 974 (1978); Edward C. Banfield, “Corruption as a Feature of Governmental Organization,” 18 *J L & Econ* 587 (1975); Dennis F. Thompson, “Mediated Corruption: The Case of the Keating Five,” 87 *Am Pol Sci Rev* 369 (1993).

<sup>56</sup> However, courts often require strict compliance with bidding requirements designed to protect public. *Haddock v. Board of Pub. Educ.*, Del. Ch., 84 A.2d 157 (1951)

Virtually all of the thirty states reviewed specifically disqualify education employees of the school district from serving as school board members.<sup>57</sup> However, some states make exceptions for other employment positions. For example, in South Carolina and Nebraska school board members may be employed in non-teaching positions. Iowa is an example of a state that generally prohibits employment, but makes limited exceptions to allow for part-time work such as substitute teaching or coaching positions. Vermont also has some narrow exceptions to the general prohibition. Maine extends the prohibition on the employment of a board member, or spouse, to include employment in a district represented by the same union.<sup>58</sup> Colorado was the only state statute reviewed which does not specifically prohibit a board member from being employed within the district. However, local practice may still prohibit the conduct and a court found in favor of a local board which refused to hire a board member based on a “conflicts of interest” policy.<sup>59</sup>

Statutes which prohibit employees of the school district from also serving as board members are essential. Although exceptions permitting part-time or incidental employment seem reasonable, allowing employees to be school board members violates the principle that board members should be those free from personal self interest. Expecting school board members to essentially supervise themselves as employees is unwise and unreasonable. It makes most sense that prohibitions on employment be extended to all employees, not just teachers and other education personnel.<sup>60</sup>

#### *Employment of Relatives within the District*

It also is essential for states to address the issue of relatives of board members being employed in the district. State statutes provide less direction or clear prohibitions on this issue. Only a very few states place significant restrictions on employment of relatives of board members within the district. Maine does not permit spouses of board members to be employed.<sup>61</sup> Alaska and Virginia prohibit certain relatives of a board member from being employed in the district.<sup>62</sup> New

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<sup>57</sup> See, Table of Results, column 4

<sup>58</sup> 20-A M.R.S. sec. 1002.

<sup>59</sup> *Montrose County School District et al. v. Patricia Lambert et al.*, 826 P. 2d 349 (1992). However, as will be discussed, these types of prohibitions based on policy are more vulnerable to attack than clear statutory directives.

<sup>60</sup> Some exceptions may be related to the pool of available candidates in small, remote districts. Certainly these types of situations could be treated as unusual exceptions with oversight by the state board of education or other outside entity.

<sup>61</sup> 20-A M.R.S. sec. 1002

<sup>62</sup> 4 AAC 18.900(a), Va. Code Ann. § 2.1-639.16.

York permits the employment of relatives, but a 2/3 vote is required.<sup>63</sup> Minnesota permits the employment of relatives, but requires 100% board approval.<sup>64</sup>

The definitions of family or relatives vary among the states and once adopted are strictly construed.<sup>65</sup> Alaska limits the prohibition to “immediate family,” which is husband-wife, parent-child, and siblings.<sup>66</sup> Virginia extends the prohibition to include a son-in-law, daughter-in-law, sister-in-law or brother-in-law of the superintendent, or of any member of the school board.<sup>67</sup> Maine refers only to a spouse. States also provide exceptions. For example, Virginia and Alaska limits prohibition on employment to persons hired after the family member joins the board.<sup>68</sup>

Many states permit a relative of a board member to be employed, but require the board member to abstain from any action on the employment contract. This prohibition remains ineffective, of course, when members engage collectively in *quid pro quos*. Moreover, these solutions, do not address the issues which arise during a board member’s tenure which involve the expectations, work conditions and budgeting issues affecting all employees, including the relative. This approach also fails to address the issue of whether the existence of the family relationship makes it more likely that particular interests that are not common to the general public interest will influence the board member.<sup>69</sup>

Surprisingly, many states do not attempt to clearly define this issue at all in the school code. Although some states had nepotism statutes applicable to all public officials, in several states we found no state statute which clearly prohibited board members from participating in the employment decisions affecting relatives.<sup>70</sup> It should be noted that local practice might be to have

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<sup>63</sup> NY CLS Educ § 3016

<sup>64</sup> Minn. Stat. § 122A.40

<sup>65</sup> See, e.g. Op S.C.St. Ethics Comm., SEC A092-214, June 9, 1992 which found that an emancipated son did not fall within the definition of “immediate family.”

<sup>66</sup> 4 AAC 18.900(a). Alaska provides for approval for employment of relatives through the state commissioner of education. This approval is not always granted. See, *Degnan v. Bering Strait Sch. Dist.*, No. 3310, File No. S-2011, Supreme Court of Alaska, 753 P.2d 146; 1988 Alas. LEXIS 44, April 29, 1988

<sup>67</sup> Va. Code Ann. § 2.1-639.16

<sup>68</sup> Virginia provides an exception if the relative was employed by the school district prior to the board member’s term of office or the inception of the relationship. Alaska provides an exception available through the commissioner and also does not apply to continued employment of persons hired before the family member was seated on the board. October 24, 1994, Op. Att’y Gen.

<sup>69</sup> This criticism could also be made regarding states which provide an exception for family members hired before the board members’ service. This exception acknowledges that the initial employment decision was not tainted by self interest, but fails to fully address issues of “particular” interest with regard to continuing employment decisions.

<sup>70</sup> See, e.g., Colorado, Georgia, Hawaii, Illinois, Indiana, Iowa, Massachusetts, Michigan, Missouri, North Carolina, Oregon, and Utah.

the board member abstain.<sup>71</sup> In some states, a general conflict of interest statute could also be interpreted to exclude voting for relatives. These types of statutes generally include language that prohibits an official when it would “inure to the special private gain or loss of a relative or business associate.”<sup>72</sup> This may be less effective than a clear statement in the school code specifically referring to employment situations.

Being closely related to an employee of the school district violates the principle that the relationship should be structured to avoid the influence of personal self-interest. To the contrary, the existence of some relationships, for instance, being married to a teacher within the district, so clearly creates a situation of personal or particular interest that these types of relationships should arguably be prohibited.

Objections to this call for reform may well include the counterclaim that they: 1) violate the American ideal of measuring an individual on their own worth, and not their ancestry; 2) could be perceived as unfair to an excluded employee; and 3) may exclude some candidates from office. We note that a board member’s service is completely voluntary. A board member is not required to serve and there are arguably many other qualified candidates within the district who could more appropriately fulfill the duties of the office. The objection also fails to acknowledge that public issues often involve a balancing of the individual and group interest. The alleged ‘unfairness’ to one potential candidate or employee must be weighed against the needs of the institution as a whole. The objection also encompasses the ideal of board members objectively measuring the merits of various employment decisions based on an individual’s worth, but then fails to realistically adopt a solution to meet this ideal. This proposal simply recognizes the natural human tendency to be influenced by personal interests. In determining whether a board member is qualified for office it is legitimate to question whether their personal relationships within the district create a situation that is not in the best interests of the district.

There are, however, problems with this approach. In practical terms, disqualification of board members based on personal relationships creates line-drawing problems. One court noted: “regardless of the criticism of nepotism and of tandem employment of relatives, a difficult decision is always presented as to where the line is to be drawn -- at spouses, or parents and children, or

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<sup>71</sup> For example, the survey response from Nebraska indicated that limitations of employment of relatives were according to local policy.

<sup>72</sup> See, e.g., Fla. Stat. § 112.3143(3)

brothers and sisters, etc. Some families are extremely close unto two or three degrees of kindred. Some are to the contrary.”<sup>73</sup> Further, any attempt to extend prohibitions to associates can easily run afoul of the individual’s Constitutional “right of association.”<sup>74</sup> It may be difficult to know where to “draw the line,” and certainly, any rule cannot deal with all possible personal associations and relationships that may be problematic. However, the fact that *all* situations are not capable of regulation does not lead to the conclusion that *any* limitation is unsound.

One can also question whether a state law is necessary or whether regulation or local policy handle these problems. However, enforcement of even basic limitations will be vulnerable to attack if not backed by a state law. For example, in New York two board members were successful in annulling a portion of the code of ethics adopted by the Board of Education that prohibited board members from voting on employment contracts of their spouses. In its opinion the commissioner reasoned:

Conspicuously absent from this provision is any restriction on the exercise of power by board members whose spouses are employed by the district as teachers. The reasonable inference drawn from this omission is that the Legislature did not intend to restrict board members from voting on their spouses' employment contracts. By enacting a standard which does precisely that, the Board of Education has contravened the plain intent of § 3016, and has, in effect, prevented certain board members from substantially performing the duties of office. Accordingly, the provision of the Board of Education's ethics code which prohibit board members from voting on the employment contract of their spouses is an excess of the authority of the Board of Education, and is null and void.<sup>75</sup>

In another instance, a Wyoming court held that board members could not be disqualified from sitting on the board of a school district because a spouse was a teacher employed by the district. The court reasoned that “a husband and wife could no longer be viewed in the law as a single

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<sup>73</sup> *Montrose County School Dist. v. Lambert*, 826 P.2d 349, 352-53 (Colo. 1992)

<sup>74</sup> See, e.g., *Robin R. Milligan v. Albertville City Board of Education*, 628 So. 2d 625; 1993 Ala. Civ. App. LEXIS 271 (1993). The United States Supreme Court has stated: "Our decisions have referred to constitutionally protected 'freedom of association' in two distinct senses. In one line of decisions, the Court has concluded that *choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State* because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. In this respect, freedom of association receives protection as a fundamental element of personal liberty." *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18, 82 L. Ed. 2d 462, 104 S. Ct. 3244 (1984), emphasis supplied.

<sup>75</sup> *Appeal of Behuniak and Lattimore*, 1991 Op Comr Educ No 12447. The opinion also references an exception for spouses in the conflict of interest law.

entity,” noting Wyoming’s equal rights amendment and statutory provisions that treated spouses as “independent actors” with respect to income, contracts, and property.<sup>76</sup> In Wisconsin, a court held that an anti-nepotism policy adopted by a local district was part of the terms and conditions of employment and therefore subject to collective bargaining.<sup>77</sup> Accordingly, while some courts may allow higher ethical standards to be adopted, others will view such attempts as an infringement on state legislative power or contractual rights.

#### **F. Board Member Business Relationships with the School District**

The ability of board members to enter into contractual relationships with the district is another area where governance structures are inadequate. While some states prohibit direct business dealings between a board member and the board, many states rely on disclosure requirements and a bidding process to protect the district from board member self interest. The bidding processes and procurement practices varied among the states.

Georgia, Minnesota, New York and New Jersey do not permit business dealings between school districts and board members. More often, the statute permits the business dealings with certain requirements such as disclosure of the interest and/or an open bidding process.<sup>78</sup> Some states seem unclear in their direction. For example, Wyoming requires abstention if the official has a personal or private interest in the matter, but states that in determining whether an interest exists, the elected official “shall recognize his right to represent his constituency and shall abstain from voting *only in clear cases* of a personal or private interest...”<sup>79</sup> In contrast, Virginia’s statute, although not absolutely prohibiting business relationships, is quite clear in discouraging the practice. Virginia law requires that in addition to a competitive sealed bidding process, the need for the contract must have been established prior to the board member’s service and the remaining board members must adopt a written resolution “that it is in the public interest for the member to bid on such contract.”<sup>80</sup>

States also differ in the source of law on the subject of business dealings. Some states, such as Pennsylvania, specifically address the issue of contracts with board members in the school code.

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<sup>76</sup> *Coyne v. State ex rel. Thomas*, 595 P.2d 970 (Wyo. 1979)

<sup>77</sup> *School District of Drummond v. Wisconsin Employment Relations Commission*, 120 Wis. 2d 1; 352 N.W.2d 662; 1984 Wisc. App. LEXIS 4050 (1984)

<sup>78</sup> See, e.g., Colorado, Indiana, Iowa, Florida, Maine, Nebraska, Texas, Virginia and Vermont.

<sup>79</sup> Wyoming Ethic and Disclosure Act, 9-12-106, *emphasis supplied*.

Some states address the issue of business dealings in general statutes applicable to all public officials including school board members. Still others address this issue in case law. For example, in Georgia the common law doctrine of “conflict of interest” was cited as prohibiting contracts with the board without citation to any specific statutory authority.<sup>81</sup> In another case, the Georgia court upheld a more stringent local ethical policy reasoning that the state ethics law was “a floor not a ceiling for the boundaries of ethical conduct by government officials.”<sup>82</sup> In contrast, in New York a court found invalid a local ethics requirement because it eliminated persons from office whom the state had found qualified.<sup>83 84</sup>

In conclusion, a review of thirty state statutes with regard to their regulation of school board member business relationships with their district indicates there are three basic approaches to the issue of business relationships with the district. Some states require that the board member disclose the interest and abstain from deliberating and voting on the issue. Other states combine abstention and disclosure provisions with public bidding and procurement processes. Few states take the approach of eliminating or severely limiting the ability of board members to enter into business relationships with the district. The latter approach seems to be the one that provides maximum protection to the public and also increases the confidence of public and employees in the fairness of the process.<sup>85</sup>

## **G. Personal and Campaign Finance Disclosure Laws**

In addition to the various provisions outlined above, many states also require elected officials to disclose their personal and campaign finances. These statutes help assure the openness and fairness of the process and provide the public with necessary information to make informed decisions. We note the following differences among states. Although many states included school board members and other locally elected officials in disclosure laws, some states limited

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<sup>80</sup> Va. Code Ann. 2.1-639.7:1

<sup>81</sup>See also, *State v. Agan*, 259 Ga. 541, 384 SE 2d 863,(1989) *cert den.* 494 US 1057, 110 S. Ct. 1526, 108 L.Ed. 2d 765 (1990).

<sup>82</sup> *Dick v. Williams*, 215 Ga. App. 629, 631; 452 SE 2d 172 (1994).

<sup>83</sup> *Matter of Guilderland CSD*, 23 Educ. Dep’t Rep. 262 (1984).

<sup>84</sup>Although a distinction could be made between the court ruling on *service on* the board versus *election to* the board, we think it more likely that these different results are an example of the wide variety among the states reviewed in addressing ethics issues .

<sup>85</sup> An absolute prohibition on business could be combined with some process for exception in extreme cases of hardship on the district.

application to state level positions. Another difference is in the level of disclosure. Some states require disclosure of the official and persons in the household, while others limited disclosure to just the public official. Many disclosure provisions could easily be avoided by placing business or contracts in a spouse or dependent's name. On the other hand, broad disclosure provisions are often challenged.<sup>86</sup>

There are broad differences in the state direction given to officials. Further, the variety in types of information requested, form of the information, different filing procedures between localities and states make review of disclosure information difficult. Also, a clearer statement of purpose, such as might be found in an oath of office, would powerfully define the board member's duty in a formal fashion and would be a helpful addition to negative statements of prohibited conduct.

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<sup>86</sup> Recall the furor over Geraldine Ferraro's husband's reluctance to disclose his business dealings. In Pennsylvania a similar issue was litigated and eventually the disclosure provisions changed by the legislature to limit disclosure to the office holders. See, *Snider v. Shapp*, 45 Pa.Comm. 337, 405 A.2d 602 (1979), *affirmed in part*, 496 Pa. 159, 436 A.2d 593 (1981)

## **5. Mechanisms to Express The Federal Interest in a Sensible Framework for Allocating Federally Funded School Resources**

### **A. Overview of Findings**

Above I have made and empirically substantiated several propositions. Those interested in becoming classroom teachers are typically below average in their scholastic aptitude; those interested in college majors other than education typically have much higher SAT tests; certification requirements in terms of subject matter knowledge are rather minimal and the passing standards chosen by the states are low. The range of actual subject matter test scores across teacher preparation programs, at least in Pennsylvania, is enormous. Local districts display an equivalent vast range in the knowledge base of whom they hire. Personnel practices vary enormously in Pennsylvania, and more professional personnel practices are associated with higher levels of student achievement.

Since school boards make hiring decisions, the question arises why we observe such huge variances (at least in Pennsylvania) in the subject knowledge of employed teachers. Common sense might lead one to expect that school boards act in the educational best interests of the children and their parents, and ensure that only the most academically qualified teachers are hired. A review of the statutes governing school board member conduct indicates they have very wide latitude. School boards are not obligated to hire the most academically qualified candidates; rather, they are obligated to hire certified teachers. Given that teacher certification standards are so low, school boards can essentially hire whomever they wish, and for whatever reason.

A review of state laws governing school board members' conduct finds that:

- requirements for election and service are modest
- few states limit the employment of relatives and some states do not prohibit school board members from voting on hiring relatives

- some states do not prohibit school board members from engaging in business relations with the district for profit or personal benefit
- conflict of interest prohibitions deal primarily with direct conflict of interest, and often rely on disclosure and bidding to protect the public interest
- drafting rules to deal with associations and indirect interests are complex and difficult
- court rulings can substantially augment or undermine local efforts to raise the ethical bar
- the oath of office is “generic” and fails to obligate school board members to act in their official capacity in the educational interest of the students;
- few states permit significant compensation to school board members in consideration for their service; and
- some states have established agencies to deal with school board ethics issues.

Have local control and Jeffersonian democracy gone wild? Why should we be surprised in this legal setting when evidence suggests that school board members do not hire the most academically qualified teacher candidates? Why should we be surprised that the public has lost confidence in the system of government when local officials are engaged in business dealings with the same government entities they are supposed to be supervising? Does the public buy the idea that a school board member whose spouse works for the system is free from bias? Is high board member turnover a result of the frustration of diligent members in this inadequate system of governance?

## **B. A Framework for Effective School Governance**

The Jeffersonian model of local government presumes that an informed electorate will choose school board members to further the educational interests of the children, parents and community. In the event that public education services do not comport to those perceived to be needed by parents and their children, they may change school districts, or find private alternatives. Even if one supports charter or voucher schools, there are several tenets common to all of these models. First, they presume the existence of reliable information about the goings on in the

classroom. Second, they assume the ability for those immediately affected (parents of school children) to have a choice over the delivery of educational services so the services meet the perceived needs of the children. Also common is the presumption that those in charge of delivering school services do so with the educational interests of the children in mind.

I take as a given that student testing of competence and achievement is occurring in most states, and that the children and parents periodically receive this information. Indeed, much of what follows presumes periodic if not high stakes independent testing of students. Best practice in my view involves independent testing at Labor Day to understand what knowledge students begin the school year with, and independent testing at the close of the year to understand what students have learned during the year. What follows is the operationalization of how one can assume that those in charge of school resources (locally elected school boards and their agents) allocate resources to ensure that this information about learning is utilized to ensure that children learn to their intellectual capacity

### **C. Determining that the States Have Fulfilled the Federal Interest: State Plans or State Laws?**

Since the inception of AFDC in the 1930's , most federal aid programs to the states have been based on a model of states' submitting and maintaining a plan to the named federal agency. The federal agency's responsibility was to review the plan to determine if it was consistent with the stated intention of the federal program, and audit state and/or local activities with the use of federal funds under the plan to ascertain if they were consistent with the plan.<sup>87</sup> Funding typically followed, especially if a formula-based federal grant, once a plan was initially approved.

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<sup>87</sup> See Filson(1992) for a discussion of how such plans are typically drafted, especially Section 12.9 dealing with different forms of sanctions.

There are, however, other models that can be devised to trigger federal payment of funds. One approach is to predicate federal assistance upon federal receipt of written assurances of compliance ( which entails essentially an initial presumption of compliance); this was the mechanism used in the 1972 and 1976 general revenue sharing legislation. Local governments provided written assurances that they would comply with the various federal reporting, budgeting and auditing, and civil rights provisions of the federal law, and on the basis of receipt of that assurance, the Treasury sent the funds. Yet another approach to triggering federal action vis a vis the states can be found in the non-disclosure provisions of the Internal Revenue Code. Federal sharing of confidential federal tax return information to a state tax administrative authority is predicated on any state, wishing to obtain federal tax return information, having in place state *laws* that assure the confidentiality of such federal tax return information. Under this approach, the confidentiality standard for the state law is the same confidentiality standard as that in place for general federal tax purposes.

Predicating federal action, under this second model, on state legislative action clearly elevates the standard beyond mere administrative assurance. By requiring tailored state legislative action as a predicate to receiving federal tax administrative assistance, it underscores for state political leaders the seriousness of their predicate action. To get record votes in a state legislature takes time, effort, and agreement that the political costs are worth the federal funds.

Given what the above review of 30 states' laws governing school board conduct and ethics has revealed, I see merit in taking this last approach to triggering federal educational assistance. The federal government has a wide array of conflict of interest statutes which govern the conduct of the federal executive, legislative, judicial branches of government as well as various federal commissions and independent agencies, and which could be identified as the proper predicate for federal assistance. Given the limited time available for developing this testimony, I was not able to

review the wide range of federal conflict of interest provisions in the U.S. Code, but adapt one found in 18 USC 201 which may be of interest to you (See Section F below).

It is easy to imagine state legislators and locally elected school officials will object to the imposition of federal standards of conflict of interest and financial disclosure, and proclaim their predicate enactment to be an unwarranted federal intrusion into their governmental lives. Several points in rejoinder are germane. First, one can wonder why high ethical standards of conduct are so problematical. Should this not be an easy thing to agree to? More practically, however, is the response that if enacting such statutes (let alone complying with them) are so violative of state and local sovereignty, then each potential recipient is free to forego the federal educational monies. Presumably leaving federal education monies on the table will not go unnoticed by state and local taxpayers<sup>88</sup> who also happen to be federal taxpayers, and likely raise internal questions about why agreeing to high standards of conduct are so problematical.

#### **D. The Federal Interest in a School Board Member's Oath of Office I: Affirming the Enterprise's Purpose.**

Undoubtedly opinions vary about what constitutes meaningful education in grades k-12 so that care must be exercised in stipulating what the *desirata* should be that warrants elected officials and their delegates recitation in order to receive federal funds. The point of such an obligation is that it ties the attainment of elected office to a well defined responsibility, and by referencing agents of the elected official, the entire educational establishment which is funded by the school budget becomes obligated to focus on students learning. Whether or not superintendents,

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<sup>88</sup> Of course, for such things to be noticed, the print and/or electronic media must report these events. Given the print media's evident perception that reporting high school athletics sells more newspapers than stories about high school academics, and the pre-Columbine notion that public education and therefore circulation was better served by the

subordinate administrators, and classroom teachers would benefit from also attesting directly to what they are supposed to be doing may be unduly mechanical. Yet, morning pledges of allegiance to the flag have been a mainstay activity in many public schools. Periodic reminders and oaths about what those those supplying educational services and direction under the authority of the local board are supposed to be accomplishing may well be salutary.

What should a school board member, upon election, attest to uphold besides the state and federal constitutions? Commonsense suggests to me that less should be stipulated about the particulars of what goes into public education than the *outcomes* which we can generally agree upon. An important baseline might be that resources be used *solely* for ensuring that each student learns to his or her intellectual capacity. Whether using public monies to put an artificial surface on the high school football field fits into this framework is an interesting question. Less challenging (to me) would be to interpret funding the school band or equipping a computer cluster in the school library as resource allocations which improve student learning. Whether or not assuming that the intellectual capacity of each student is static remains the outstanding issue for this modest proposal . My own attitude towards my students at Carnegie-Mellon is that more academic work makes students minds stronger. Just as practice on the playing field improves performance, continued challenges in the classroom and through homework improve the thinking and problem solving processes.

Were board members to affirm their commitment to individual learning, and superintendent's and their subordinates affirm it as well, then one would hope that the board members would insist they be provided periodic reports on student learning progress, and through the oversight process see to it that corrections be made to policy so that the *desirata* is

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newspapers not reporting discipline and violence in the schools, my optimism that the public will take action at the

accomplished. Public disclosure of outcomes without publicly embarrassing individual students and their parents seems essential to such a process; private notification of students and their parents of learning progress seems equally essential.

#### **E. The Federal Interest in a School Board Member's Oath of Office II: Agreement to Not Engage in Direct or Indirect Conflicts of Interest**

As noted in the review of state ethics laws, state limitations on board employment and business relationships with the school districts they govern are an amalgam of direct limitations, open procedures and disclosure *per se*. 18 USC Sec. 201 sets a high federal standard in defining what constitutes bribery, graft and conflict of interest for various federal officials, and would appear to deter most if not all of the objectionable or questionable conduct discussed earlier.

Consider the following reworking of 18 USC 201 as a predicate statutory requirement for receiving federal education monies:

A qualified state shall be one which has in place and in effect such law which prohibits anyone...

being a school board director or person selected to be a public school board director who, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the state; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

and which shall further provide that anyone found violating this prohibition ....

shall be fined under state law not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both,

and may be disqualified from holding any office of honor, trust, or profit in the state.

This statutory prohibition can then be turned into an oath of office by simply obligating elected school board members to swear that they will not violate the above state law.

#### **F. The Federal Interest in a School Board Member's Oath of Office III: Agreement to Disclose Finances**

The last component in this new framework for ensuring high standards for school board director conduct is to provide the information base upon which judgments can be reached about whether self-dealing has in fact taken place. Financial disclosure is relatively commonplace for local officials; however, few states require the provision of comprehensive financial information. Here, by comprehensive I mean the official's personal tax return as well as that of his spouse and any business returns. Perhaps as important as the nature of what is disclosed is the matter of *to whom* the disclosure should be made, whether or not it is or can be public information, and who will use this information to check compliance with these new state strictures against direct and indirect conflicts of interest.

Given that beneficiaries of federal assistance are audited in conjunction with the Single Audit Act, perhaps there is merit in extending the independent auditor's responsibilities to include determining if each school board director is in compliance with state laws governing conflict of interest. If this course of action is pursued, then the opinion letter would need to state whether or not the auditor believes there is evidence of such direct or indirect self-dealing. Presumably the independent auditor's opinion on self-dealing would be public locally and conveyed to the federal government and appropriate state agencies. An annual, independently rendered opinion about the

financial integrity of elected school board directors that is publicly stated should help organize perceptions about the integrity of school resource allocation decisions. It would be far more effectiver than simply allowing anyone to look at a mound of financial data for each school board member. Whether or not financial disclosure militates against running for office is a difficult question, and one that deserves further inquiry before the sorts of changes in federal “strings” for education monies get enacted. .

## **G. Discussion**

I began my testimony with the observation that unless the teacher hiring decision is cleaned up, all bets are off in terms of improving student performance. Hopefully, upon reflection of the various facts and analyses above, you will find this observation insightful. Whether or not the new form of federal intergovernmental relations that I have outlined will lead to the most academically qualified being hired is a long overdue reform, or a solution in search of a problem, <sup>89</sup> is likely to be argued vigorously. However, simply obligating local districts to hire the most academically qualified, or, say, those with National Board Certification, when the districts are not obligated to ensure the learning of each student, seems, to me, to be reforms placed in a vacuum whose ultimate impact will dissipate without effect..

But what of current teachers and the emerging, related debate over the national interest in stronger professional development? Elsewhere <sup>90</sup>, I have discussed the merits of giving parents a significant if not determinative say in who teaches their child. The basic idea is to graft the college

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<sup>89</sup> Admittedly this has been the reaction of some long-term observers of public education. On the other hand, the sheer quantity of anecdotes about teaching hiring and school board and superintendent mischief which began in 1997 as I surveyed Pennsylvania school districts has been astonishing. Perhaps more confirmatory about the importance of cleaning up the hiring decision has been the absolute disinterest on the part of the Pennsylvania State Board of Education and General Assembly in even discussing the matter, let alone facing up to it legislatively.

<sup>90</sup> See Strauss *et al*(1999).

model of instructor choice onto k-12 by eliciting parental preferences for the child's teachers. After expressing first, second, and third choice, the building principal would then assign students using an algorithm which maximized the preference rankings. In an environment in which high stakes testing is taking place, parents and their children would be induced to seek out the teachers who will effect learning the most.

Why is creating teacher choice a professional development tool? Given more stringent curricula expectations, or at least given high stakes testing, parents will seek out those who will help their children learn and achieve. Just as college professors seek to encourage attendance by providing syllabus and curricula to those thinking about taking our courses, school teachers will begin to extol the virtues of their courses. As parents seek to be sure that their child will be properly prepared for high stakes testing, teachers will get the message and be relevant to that task. Moreover, as information about student learning by teacher becomes available through publication of test results, parents will become increasingly informed about who is most effective.<sup>91</sup> Teachers who are burned out, teachers who have stopped keeping up with curricula changes, or teachers who are incapable to dealing with more demanding curricula will be sorted out and face empty classrooms. While tenured they would continue to be paid, although it is reasonable to suppose that sooner or later the public and especially taxpayers would find out that some teachers were being paid to do nothing. At that time, presumably both administrators and labor unions would have to face up to the dark side of the teacher quality problem, and counsel those without students about what their realistic choices are.

This solution to professional development sidesteps the issue of who will pay for further training and classes, the traditional definition of professional development. Instead, it treats

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<sup>91</sup> This is, of course, very close to the Tennessee system of testing and evaluation. See Sanders(1994).

classroom teachers like other professionals. They are then responsible, just as professors, doctors, lawyers and accountants are, for keeping up in their field and keeping their clients happy. This solution also has the happy characteristic of not violating existing collective bargaining agreements, for no collective bargaining agreement prohibits getting paid for doing nothing. While classes for most teachers will increase, it is unlikely they will increase much as I surmise that the teacher lemon problem is on the order of 1-2%<sup>92</sup>

#### **H. Some Thoughts about the Political Realism of Raising the Bar for Local School Boards**

I can readily imagine legislators and their staffs, if they have read this far, wondering out loud if I have any sense of political reality. The smart thing to do would be to simply state, as a matter of Congressional intent, that any federal monies used by local districts be to hire a teacher be used to employ the best school teachers available. What could be more necessary than an assertion of the obvious?

As a parent of three teenagers (along with my wife, who incidentally endorses everything in this testimony and then some), I can assure you that telling rambunctious kids, to whom you have given the car keys to, may provide some temporary sense of self-righteousness, but such speeches at the door are not going to get them in by the appointed time or keep them away from the wrong kind of movies. Intergovernmental relations in the U.S. have all the characteristics of parental supervision of the kids. Some will claim they are your favorites and deserve extra treatment. Others may simply threaten you in return for assertions of laying down the law. However, you know in your heart of hearts that if you do not instruct them about what they are to do with the allowance you give them, they will do as they please.

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<sup>92</sup> One urban school administrator asked me recently if such parental choices would include “none of the above.” He

Over the past decade my research and analysis about alleged teacher shortages in Pennsylvania, curricula matters, and teacher supply and demand, have taken me through gigabytes and gigabytes of administrative records, the analysis of teacher and student test scores, and the vagaries of the Pennsylvania School Code. Learning that the SAT scores of those, who want and actually become, teachers has been consistently below the median SAT score and well below those interest in other college majors was a very explanatory fact. Another was finding out that on November 22 1968, the Pennsylvania General Assembly materially weakened the oath of office of elected school board members. No longer are they required to affirm that "...will not knowingly receive, either directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office..." They simply must support, obey, and defend the State and US Constitution.

As a matter of legislative design, I am not certain that federally specifying what passing test scores on proprietary tests is a good idea. However, it does seem obvious to me that the time has come for local school board members to publicly state they are there to ensure that students learn, and that the board members will govern without direct or indirect conflict of interests. If that is not in the national interest as you provide federal education funds for local districts to spend, what is?

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urged that it be included, although he was mindful of the additional commotion it might cause.

## 6. References

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## Appendix 1: School Board Oaths of Office and Related Provisions in Selected States<sup>93</sup>

### A. - California

#### OATH OF OFFICE

From California Education Code (Note: much shorter than Oath under CA Constitution)

44334. Except as provided in this code, no certification document shall be granted to any person unless and until he has subscribed to the following oath or affirmation:

"I solemnly swear (or affirm) that I will support the Constitution of the United States of America, the Constitution of the State of California, and the laws of the United States and the State of California."

The oath or affirmation shall be subscribed and certified or declared, pursuant to Section 2015. 5 of the Code of Civil Procedure, and shall be filed with the commission. Upon the violation of any of the terms of the oath or affirmation, the commission shall suspend or revoke the credential which has been issued.

#### FURTHER - Grounds for Dismissal

44932. (a) No permanent employee shall be dismissed except for one or more of the following causes:

- (1) Immoral or unprofessional conduct.
- (2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919, or in any amendment thereof.

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<sup>93</sup> Source is Lexus search of state statutes.

- (3) Dishonesty.
- (4) Unsatisfactory performance.
- (5) Evident unfitness for service.
- (6) Physical or mental condition unfitting him or her to instruct or associate with children.
- (7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.
- (8) Conviction of a felony or of any crime involving moral turpitude.
- (9) Violation of Section 51530 or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.
- (10) Knowing membership by the employee in the Communist Party.
- (11) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

**B. Colorado**

OATH OF OFFICE -

Each school board member, no later than fifteen days following the survey of votes, is required to take an oath of office that he/she will faithfully perform the duties of his/her office as required by law and will support the Constitution of the United States, the

Constitution of Colorado and laws made pursuant thereto. Such oath shall be filed with the county clerk.

**C. Florida**

OATH OF OFFICE--

I, \_\_\_\_\_, a citizen of the State of Florida and of the United States of America, and being employed by or an officer of the School Board of \_\_\_\_\_ County, Florida, and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida."

**D. Michigan**

OATH OF OFFICE -

(2) Each person elected or appointed to the board of a school district shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of member of the board of education according to the best of my ability".

**E. New York**

OATH OF OFFICE -

The Public Officer's Law requires public officials to take and file an oath of office. This requirement is set forth in Public Officer's Law § 10, which provides, in part that "[e]very officer shall take and file the oath of office required by law..." The oath to which public officers must affirm is set forth in Section I, Article XIII of the New York State Constitution and provides:

"I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of \_\_\_\_\_, according to the best of my ability;"

All public officers are required to take and file an oath of office, unless specifically exempted by statute.

Further -

Sec. 2103. Ineligibility to office. 1. No district superintendent or supervisor is eligible to the office of trustee or member of a board of education, and no trustee or member of a board of education can hold the office of district clerk, collector, treasurer or librarian, except as otherwise provided by section twenty-one hundred thirty.

2. A person removed from a school district office shall be ineligible to appointment or election to any district office for a period of one year from the date of such removal.

3. Not more than one member of a family shall be a member of the same board of education in any school district.

## **F. North Dakota**

OATH OF OFFICE -

Oath of office that is appropriate

for new School Board members. It is included here only for

review by the current board members. This oath can be found in NDCC 44-10-05 and in the North Dakota Constitution Article XI, Paragraph IV. The prescribed oath is: "I, \_\_\_\_\_, of Bismarck, ND, do solemnly swear that I will support the constitution of the United States and the constitution of the State of North Dakota and that I will faithfully discharge the duties of the Office of Member of the School Board of \_\_\_\_\_ School District, according to the best of my ability, so help me God."

**G. Oregon**

OATH OF OFFICE -

New directors must qualify by taking an oath of office before assuming the duties of office.

The oath of office shall be as follows:

I, \_\_\_\_\_, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of Oregon and the laws thereof, and the policies of the Canby School District. I will faithfully and impartially discharge the responsibilities of the office of School Board Member according to the best of my ability during the term for which I have been elected.

**H. Pennsylvania**

OATH OF OFFICE -

§ 3-321. Compensation; oath of office.

All persons elected or appointed as school directors shall serve without pay except as hereinafter provided. Before entering upon the duties of their office each shall take and subscribe to the following oath or affirmation, which may be administered by any one

qualified to administer an oath, or as hereinafter provided:-

I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity.

FURTHER -

§ 3-322. Eligibility; incompatible offices.

Any citizen of this Commonwealth, having a good moral character, being eighteen (18) years of age or upwards, and having been a resident of the district for at least one (1) year prior to the date of his election or appointment, shall be eligible to the office of school director therein: Provided, That any person holding any office or position of profit under the government of any city of the first class, or the office of mayor, chief burgess,

....., supervisor, principal, teacher, or employee of any school district, shall not be eligible as a school director in this Commonwealth. This section shall not prevent any district superintendent, assistant district superintendent, supervisor, teacher, or employe of any school district, from being a school director in a district other than the one in which he is employed, and other than in a district with which the district in which he is employed operates a joint school or department...

§ 3-323. Ineligibility.

Any person who has held any office of trust or profit under the laws of the United States or of this Commonwealth, or in any county, city, borough, incorporated town, or township therein, and has been removed therefrom for any malfeasance in office, shall not be eligible to the office of school director.

## **I. South Carolina**

OATH OF OFFICE -

At the first Board meeting following a school board election, new Board members shall take the following oath prior to any action on the part of the Board.

"I do solemnly swear (or affirm) that I am duly qualified, according to the

Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. So help me G

## **J. Virginia**

Anti-Nepotism Rules -

### **B. Areas of Regulation**

The State and Local Government Conflict of Interests Act establishes five principal areas of regulation applicable to board members, officers, and employees of the Bedford County School Division.

1. Special anti-nepotism rules relating to School Board members or superintendents of schools.

### **C. Definitions**

"Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

"Employee" means all persons employed by a governmental or advisory agency.

"Immediate family" means ( i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Officer" means any person appointed or elected to any governmental or advisory agency including local School Boards, whether or not he receives compensation or other emolument of office.

D. Special Anti-Nepotism Rules Relating to School Board members and Superintendents

1. The School Board may not employ, and the superintendent may not recommend for employment, the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law, of the superintendent or of a School Board member. This provision shall not be construed to prohibit the employment, promotion, or transfer within the school division, of any person within a relationship described above when such person:

- Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by the School Board prior to the taking of office of any member of the board or superintendent; or
- Has been employed pursuant to a written contract with the School Board or employed as a substitute teacher or teacher's aide by the School Board prior to the inception of such relationship; or
- Was employed by the School Board at any time prior to June 10, 1994, and had been employed at any time as a teacher or other employee of any Virginia school board prior to the taking of office of any member of the School Board or superintendent.

A person employed as a substitute teacher may not be given any greater employment than that obtained in the last full school year prior to the taking of office of the superintendent or any School Board member.

2. No family member (as listed in section D(1), above) of any employee may be employed by the School Board if the family member is to be employed in a direct supervisory and/or administrative relationship either supervisory or subordinate to the employee. The employment and assignment of family members in the same organizational unit shall be discouraged.

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