

SCHOOL GOVERNANCE REPORT AND RECOMMENDATIONS

COMMUNITY DISTRICT EDUCATION COUNCIL 26

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A general governance principle that has served our nation well is republicanism. The belief that no one person shall rule the community and everyone shall have a part in the public's business, guides and supports all discussions of government rule. We have a representative republic that reflects this concept. We have separation of powers to ensure this principle is carried out. The founding fathers created the U.S. Constitution and imbued it with separated powers for three independent branches of government, each checking and balancing the power and authority of the other branches. This system is time consuming and not the most efficient, but it is a brilliant one. It has enabled the United States to be the longest running republic in the history of the world. New York State and all other states adopted this system of separation of powers with checks and balances. New York City is a municipal corporation governed by both state law, the New York City Charter, and the New York City Administrative Code, as well as the Rules of the City of New York. Historically, the City has had an exceedingly strong executive branch and a relatively weak legislative branch, (previously the Board of Estimates and the City Council – now solely the City Council.) There are City agencies delineated by the City Charter with enumerated powers and Mayoral agencies, but all are ultimately answerable to the Mayor, although the City Council which controls the purse- strings, can exercise considerable oversight through hearings and other measures, including the budget process. Unfortunately, in the area of education, arguably under the old Board of Education system, and clearly under the present Department of Education model, there are insufficient checks and balances to New York City's Mayor's control. In fact, there are no effective safeguards reflecting a clear commitment to republican principles of governance, for the Mayor alone "rules the roost" in public education, and no member of the community has a substantive part in that rule.

The reasons for the Mayor being given this control are manifold and notorious. Suffice it to point out that the immediate predecessor system was deemed corrupt,

inefficient and not responsive. Legislators sought to remedy this by giving the Mayor what he and previous Mayors had asked for, control and accountability over the New York City public education system. Unfortunately, in handing over control to the Mayor, legislators failed to consider that many School Districts thrived under the previous system – District 26 being one. The legislators also failed to realize and consider that the Mayor had plenty of power under the previous system as a result of his control over the city's budget. These realities must be factored into the review of the current system.

Also to be factored in, is the power given to the Mayor of New York City by judicial case law. The case of the Council of the City of New York vs. Michael R. Bloomberg, 6 NY3L 380 (Court of Appeals, N.Y. 2006), ruled that the Mayor acted within the scope of his authority when he refused to abide by an anti-discrimination statute passed over his veto by the New York City Council. This case, in effect, overruled 200 years of case-law that gave the judiciary the power to review the validity of actions taken by the branches of government. This case, in essence, ended the practice of separation of powers and checks and balances relied upon since 1802, as settled in the U.S. Supreme Court case of Marbury vs. Madison. This New York case gives the Mayor the authority to not enforce a law or regulation, passed by the duly elected members of the New York City Council, that he or she believes is unconstitutional or violates a state or federal law.

This authority can be used by the Mayor in refusing to adhere to a City Council law that seeks to end the ban on cell phone possession at New York City public schools. The Mayor can claim this law violated the state law on municipal home rule that requires a referendum for legislation that “curtails any power of an elective officer.” The City Council would then have to bring a successful lawsuit to get the Mayor to enforce the law. This is a result of the Court of Appeals case discussed above that changed the old system of checks and balances that would have forced the Mayor to abide by the law and bring the lawsuit seeking to have the law invalidated. Any law regarding New York City School governance must consider this authority of the Mayor. By ignoring the authority inherent in the Mayor's office, the current system failed to provide effective assurances of checks and balances and republican principles of governance.

The weak checks in place - the Education Panel, Community District Education Councils and Community District Superintendents - were not designed to balance the

Mayor's control, and have proven largely ineffective. Members of the Education Panel risk dismissal if they express any discord with the Mayor's desired policy. Community District Education Councils have not been utilized as sources of information on community needs, and their advice on education matters is neither sought nor given attention. Community District Superintendents have been given responsibilities that keep them out of their districts 85% of their time, often traveling from one borough to another.

While avoiding the school governance laws' limited check on his power, the Mayor's Chancellor has, whether by design or by haphazard trial and error, embarked on the most destabilizing policies in the history of New York City's public education system. Two major reorganizations of the school structure have been instituted, from a region system, comprising of districts, to a single school system within five years. Just when the first reorganization was being understood and implemented, the Mayor changed course and instituted a new organization system. Given that both reorganizations have been well-documented, a further detailed description is not needed. However, it must be noted that neither reorganization was preceded by meaningful community or non-DOE input. The Chancellor announced the policy change desired and then conducted public hearings. C.D.E.C. 26 conducted hearings on the second reorganization and offered recommendations; no response was given by any member of the D.O.E. to these, and no meaningful change to the policy was effected as a result of the public hearings.

In a similar manner, a new funding formula was devised and announced by the Mayor and Chancellor. C.D.E.C 26 had hearings and made recommendations. Once again, no response from a member of the D.O.E., but one recommendation was adopted in the final plan. Significantly, this recommendation was also pursued by the United Federation of Teachers since it concerned schools being held to charge teachers' salaries against the schools' budgets. The change on this policy came a few days prior to a planned rally by parents and teachers in opposition, that was expected to have several thousands in attendance. Clearly, the pressure for this change to the announced funding formula was tremendous and is not easily replicated.

In the most telling example, the Department of Education created the office of the Chief Family Engagement Officer without seeking the Community District Education Councils' advice. In fact, the Chief was appointed without any C.D.E.C. input or the input from any parent organization. How perverse, appointing a person to serve as a liaison to parent organizations without consulting parent organizations. There were

also the policies regarding Progress Reports and increased numbers of standardized tests and the concomitant greater reliance upon them. Again, the lack of effective checks or balances on the Mayor's control allowed these major policy changes to be enacted, as proposed, despite much opposition and criticism.

In sum, it is the observation of C.D.E.C. 26 that no significant change has occurred to a significant policy of the D.O.E. as a result of the public hearing process. Nor has there been any such change as a result of the mechanisms in place that are designed to check and balance the Mayor's authority or to offer advice to the Chancellor. Consequently, the current law lacks an effective method to curtail the ability of the Mayor to effectively do as he or she pleases with the public education system in New York City.

The current system is also without a mechanism to hold the Mayor accountable for his/her performance. There are many issues that are addressed by candidates seeking to become Mayor, and public education, while important, is not necessarily a determining one in the minds of the majority of voters. Moreover, once elected, it is too easy to excuse lackluster results due to insufficient time for the "new" policies to work. Also, too few in the electorate understand education issues in a way to question and understand the enormous data put out that is supposed to track student performance and school effectiveness. In any event, this data is often self-contradictory or divergent from non-D.O.E. data. Thus, the elections for a Mayor's first and second terms may not be construed as referendums on education issues. Then, in the second term, as a term-limited official, the Mayor needs to heed no voice but his/her "inner one". Such lack of accountability is frightening in light of the level of control given and cannot continue.

C.D.E.C. 26 firmly believes that improving the New York City education system requires paying attention to the proposals and ideas from those closest to the system – the students, parents, teachers and administrators. The current system does not institute this and allows the Mayor to ignore these vital members of the education community. The system also lacks any check and balance or accountability system on the Mayor's control. Coupled with the case law in New York State, the current school governance is by Mayoral dictate. Policies are implemented at the Mayor's will and whim. The current system lacks any ability to offer and impose upon the Mayor the need to vet policies for their efficacy prior to implementation, or even thereafter. For example, during the past five years, several elected officials, school principals, district superintendents, parent leaders and media people have stated that they have been

ignored by members of the D.O.E. and the Mayor on education issues. If not from these members of the education community, to whom does the Mayor seek advice on education matters? If only from the like-minded, there is no value to such advice. It follows then that for effective school governance the system must be changed to impose republican principles that ensure a broader scope of inquiry. The education of our children is too important to be decided by one person. The budget of this system is too large to be decided by one person. A system of checks and balances must be instituted under Mayoral control of our schools, to ensure accountability and responsiveness.

To effectuate needed changes, the C.D.E.C. 26 offers the following as possible changes to the school governance:

1. Change the Department of Education into a New York City agency and give the City Council oversight. This must be equal to its oversight of other city agencies.
2. Create five separate Borough Commissioners who shall be appointed by the Mayor upon the advice and consent of the City Council and the Borough President of the affected borough. The Borough Commissioner shall report to a New York City Commissioner, who shall report to the Deputy Mayor of Education.
3. Increase authority of the Community District Superintendent to enable this person to coordinate and evaluate instruction and operations in district schools. The Education Commissioner of the Borough will appoint this person, upon the advice and consent of the district's Education Council. The Community District Superintendent shall be responsible for the education in the schools of his or her respective district and shall have no responsibilities toward schools not within that district.
4. Give each Borough President control over a budgetary aspect of education for his or her respective borough, e.g., transportation.
5. Do not endeavor to recreate school boards. An effective check on Mayor's control cannot depend upon volunteers, notwithstanding the value we, as a society, place on volunteerism, community participation and most of all, parent involvement. In the Council's view, there is insufficient time for volunteers to become sufficiently versed in education issues to become effective advocates in opposition to Mayoral dictates. Volunteers, who give their own time, most in limited intervals, cannot effectively counter the ability of a Mayor or Chancellor, supported by full-time paid officials. An effective balance must come from full-time, paid professionals, e.g., City Council members and Borough Presidents, supplemented by C.D.E.C. members and their localized insights.

Regardless if any of the above are accepted, the current system must change. The system has wrought many changes and yet, it is unclear as to the actual results achieved. City, state and federal tests results differ in scores that indicate either no improvement, minimum improvement, or significant improvement. There are also different results concerning high school graduation rates that obscure clear evaluation. There are even different results concerning class-size reduction. However, the D.O.E. does implicitly acknowledge not achieving significant academic improvement by sixth, seventh and eighth grade students, since we have the "Middle School Crisis" task force. These students are the product of one Chancellor, serving one Mayor, implementing only their policies. Thus, it is the position of C.D.E.C.26 that the results of Mayoral Control cannot justify the current school governance system.

In conclusion, C.D.E.C. 26 has reviewed the current school governance system and has heard from members of our education community. Based on these, we ask for changes to the current system that reflect our concerns.

Adopted by the Community District Education Council 26 on April 17, 2008