



Chapter 2

The Local Board of Education

Local Control is a Public Trust

Communities elect representatives to local boards of education to serve as their trustees. A board member holds power in trust for everyone and every group in the school district, whether he is elected districtwide or by division. A board member must carry out responsibilities for the benefit of, and in the interest of, individuals and groups in the school district.

Duties of the Local Board of Education

The General Assembly and Kentucky Board of Education have delegated much of the responsibility for organizing and conducting educational programs to local boards of education and to school councils, also called school-based or site-based decision making councils. This means that boards and councils are extensions of state government; local board members are considered state officers, receiving their authority and responsibility from the General Assembly.

The general powers and duties of the local board are outlined in KRS 160.160 and 160.290, but the full responsibility of a local board is detailed in other statutes.

Among the major duties of the board:

1. Establish schools, acquire sites and erect buildings.
2. Adopt courses of study.
3. Provide necessary services to pupils.
4. Manage all funds and property.
5. Make appropriate rules, regulations, and bylaws. (KRS 160.350)
6. Appoint a superintendent of schools.
7. Adopt a budget. (KRS 160.470)
8. Take necessary action to levy needed taxes. (KRS 160.460-160.500)
9. Assess individual student progress. (KRS 160.345)
10. Adopt a plan for immediate and long-term strategies to address school safety and discipline. (KRS 158)
11. Formulate a code of acceptable student behavior and discipline that applies to each school in the district.



It's impossible for the average school board member to be familiar with all the district's legal requirements, just as it is impossible for the average member of the General Assembly to be familiar with all state laws and regulations. For that reason, local board members often must rely on the expertise of district staff or local legal counsel. Board members must recognize when additional information is needed and the best sources for that information.

Most of a local board of education's duties are fulfilled with the adoption of district policies. Once policies are adopted, the focus shifts to the district superintendent and staff to implement the policies. Neither the board as an entity nor individual board members are involved with day-to-day administration of board policies or district administration; that responsibility by law falls on the superintendent and his staff. However, the board does monitor overall district performance and can revisit, amend or repeal policies that it believes are in the best interest of the district.

Board Member Qualifications

To serve on a local board of education a person must meet the following qualifications (KRS 160.180):

1. Be at least 24 years old.
2. Have been a citizen of Kentucky for at least three years preceding her election and be a voter of the district she is elected to represent.
3. Have completed at least the 12th grade, been issued a GED certificate or been elected prior to July 14, 1990 with no lapse in service.
4. Have signed an affidavit under penalty of perjury certifying completion of the 12th grade or the equivalent as determined by passage of the 12th-grade equivalency examination regulated by the state board of education, and have filed an affidavit with the nominating petition.
5. Does not hold a state office requiring the constitutional oath and is not a member of the General Assembly.
6. Does not hold or discharge the duties of any civil or political office, deputyship, or agency under city or county government.
7. Is not, at the time of his election, directly or indirectly involved in the sale to the board of anything, including services, paid for with school funds.
8. Has not been removed from a board of education for cause.
9. Does not have a father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, or daughter-in-law employed by the school district. This does not apply to a board member holding office on July 13, 1990 whose relative was not initially hired by the district during the board member's tenure.

Board Member Election

Except in Jefferson County and special cases resulting from school district merger, boards of education in Kentucky consist of five members. Board members are elected for a four-year term on a nonpartisan ballot in even-numbered years. Terms are staggered so that the terms of not more than three members of a local board expire at the same time. In independent school districts, school board members are elected at large. In county school districts, members are elected from divisions.

School board candidates cannot solicit or accept any political assessment, subscription, contribution, or service of any employee of the school district. (KRS 161.164)

Board member in-service training

Once elected, board members must meet annual in-service training requirements based on length of service:

0-3 years	12 hours of annual training
4-7 years	8 hours of annual training
8-plus years	4 hours of annual training



New, inexperienced board members must acquire training hours from among the following topics: school law, school finance, community relations, policy development, personnel relations (for limits, see Chapter 4), instructional programs, superintendent/board relations, goal setting, decision making, employment and evaluation of the superintendent, and educational services for gifted and other special-population children.

Board Member Meeting Attendance

A board member failing to attend three consecutive regular meetings is subject to removal from his office, unless he is formally excused by the board. Such excused absences should be reflected in the official meeting minutes. Special meetings are not counted in determining whether a board member should be removed.

Immediately following election, board members are also required to regularly attend board meetings.

The Board as a Corporate Body

According to KRS 160.160, "Each Board of Education shall be a Body Politic and Corporate with perpetual succession." That language means that individual board members have no authority outside of legally called board meetings. Only when the board gathers as a corporate body do the members have the ability to take action on behalf of the district. They cannot direct any action in the district outside of those meetings. With the exception of the chairman's authority to call a special meeting, individual board members have no more authority than an individual citizen to direct the affairs of the district. Only actions recorded in the minutes of a board meeting reflect the official acts of the board. This is why each board member should carefully review the minutes of each board meeting before voting on their approval, as the minutes are the only legal record of the official actions of the board.

Personal liability

Board members are generally held to be immune from personal liability for actions taken by the board, providing they act in good faith, and without illegal motive, fraud, collusion or gross negligence.

State law allows school boards to purchase insurance to protect members when they act in their official capacity. Boards should discuss coverage with the superintendent and board attorney. KSBA provides policies designed for districts through the Kentucky School Boards Insurance Trust, and provides both information on insurance coverage and policies designed for local districts. Insurance generally will not protect board members who commit intentional bad-faith acts, such as knowingly violating criminal law or intentionally violating a person's civil rights. Board members who commit such acts may not be immune from legal action and may be held responsible by the courts.

Board officers

To carry out its responsibilities the board is required to appoint officers. By statute, the board elects a board chairman and vice chairman and appoints a superintendent, board secretary, and board treasurer. The board also employs the board attorney. The position of superintendent, who is the executive agent of the board, is discussed in chapter 3.

Board chairman

The chairman presides over meetings of the board, keeping the discussion focused on the topic under consideration, encouraging each member to contribute, and giving attention to all questions. She will lead but not dominate the meeting. The chairman can vote and make motions. The chairman signs most official board documents, including orders of the treasurer and contracts. (The superintendent or designee signs purchase orders and personnel contracts.) The chairman may perform other functions required by the board and allowed by law.

The chairman and vice chairman serve a term of no more than two years, though the board can set the term for a lesser length.

Vice chairman

The vice chairman presides in the absence of the chairman. The vice chairman may perform other functions required by the board and allowed by law.

Board secretary

State law says a board of education must appoint a secretary for a term of one, two, three or four years. The secretary reports and is responsible to the board. The superintendent has no role in the appointment of the board secretary. The secretary cannot be a member of the board of education.

The secretary keeps the board's minutes. The minutes should be clear, concise, legible, and, above all, accurate. The minutes should show:

- ❖ The place, date, and time of the meeting.
- ❖ The names of members present.
- ❖ The transactions of the board, including the names of persons making and seconding motions, and the name of each person voting and how he voted.

During meetings, the secretary must record all official proceedings. Minutes of meetings are to be kept in a book that is a public record open to inspection after the board approves them. The secretary also signs all orders of the board and sees that the chairman countersigns them. The secretary is the official custodian of all securities, documents, title papers, and other papers of the board, keeping them as the board directs. The superintendent can serve as secretary to the board. A board secretary other than the superintendent must make all records, and information contained in those records, available to the superintendent at any time. A superintendent can't receive additional compensation for serving as board secretary. The board can set a reasonable salary for anyone else serving as secretary.

The secretary must call a special meeting of the board when requested by the chairman or by three members of the board. State law requires the secretary to attend board meetings except when his own tenure, salary or the administration of the office is under consideration.

Treasurer

State law requires each board of education to elect a treasurer. The board may elect its secretary to serve as treasurer. The election of the treasurer does not require the superintendent's recommendation. Although not required, it is recommended that the board hire a treasurer with accounting experience, preferably a certified public accountant. The treasurer reports and is responsible to the board. The board can remove the treasurer from office for cause by majority vote at any time.

The treasurer pays all bills of the board, receives all money due the district and deposits it in a depository designated by the board. Kentucky law requires the treasurer to be bonded by an authorized surety company. The board pays the premium on the bond.

Duties of the treasurer include:

- ❖ Being responsible for all funds belonging to the school system.
- ❖ Keeping an accurate record of all receipts and disbursements.
- ❖ Preparing periodic reports and financial statements.



Board attorney

Appointment of a board attorney is at the discretion of the board. However, the complexity of school issues, from special education law to due process for employees, requires legal advice from some source. A board should carefully determine the terms of the agreement with the attorney. If the attorney is put on a retainer, the agreement should clearly specify services included as part of the retainer and the costs for services outside the retainer. The board should also delineate who is authorized to contact the attorney. Usually, only the superintendent and the board members have that authorization.

An attorney who is well-versed in federal and state laws, due process laws, and court rulings that affect public schools can be an invaluable asset to a board. The National School Boards Association's "Becoming a Better Board Member" publication lists the areas where an attorney can assist the board:

- ❖ Reviewing board minutes to ensure that all board actions are legally sound.
- ❖ Determining whether board-meeting procedures comply with law.
- ❖ Advising the board on the interpretation of statutes, charters, court mandates, contract language, and other technical matters of law.
- ❖ Writing board policy in clear, precise English.
- ❖ Reviewing the board's policy manual to ensure that all legal requirements have been addressed in policy and that policies are legally sound.
- ❖ Reviewing all contracts and advising the board in contract negotiations.
- ❖ Reviewing all hiring procedures.
- ❖ Preparing or reviewing board bid invitations, job specifications, and construction and other contracts.
- ❖ Advising the board on due process procedures and the conduct of hearings.
- ❖ Reviewing all procedures and regulations regarding the rights and responsibilities of students, and pupil discipline.
- ❖ Reviewing federal programs to determine what constitutes legal compliance.

The role of the attorney is to explain the legal implications of board decisions or actions and to present options for decisions based on legal interpretations. The attorney also should point out any legal problems that may arise from a proposed action of the board.

QUESTIONS

Q. *What happens if there is a vacancy in a board seat?*

Any vacancy on the board must be filled by the commissioner of education within 90 days after the vacancy occurs. The appointed member must meet the state eligibility requirements and hold office until his successor is elected and has qualified. The local board may make nominations and anyone can self-nominate for the office. The commissioner can establish a committee to interview candidates and to make a recommendation.

If a vacancy has an unexpired term of one year or more at the next regular November election after the vacancy occurs, the unexpired term shall be filled in an election at the next regular November election after the vacancy occurs. The elected member shall succeed the member chosen by the commissioner. If the unexpired term is less than one year, the commissioner's appointee serves the remainder of the term.

All board terms run for four years and never change. Thus, if a member is elected and later resigns, the person appointed serves only for the remainder of the original four-year term. In that sense, the term never changes from the original four years regardless of who or how many may serve during the four-year term.

Q. *Do board members receive a salary or expenses for board service?*

Board members cannot receive a salary for board service; however, board members can receive a per diem of \$75 for each board meeting attended, whether a special or regular meeting. Board members can also receive reimbursement for expenses for attending each board meeting. Per diems cannot exceed \$3,000 per calendar year and expenses for attending meetings within the district may not exceed \$3,000 per calendar year. Board members also can receive a per diem for attending the in-service training required by statute. A board member cannot receive a per diem for training above the training hours required by statute.

A board member can be reimbursed for actual and necessary expenses incurred outside the district while performing district duties as long as it is authorized by the board. For example, a board member can attend a meeting on behalf of the district at the state Department of Education in Frankfort and receive a reimbursement of expenses. Expenses incurred outside the district are not calculated in the \$3,000 calendar-year limitation for in-district expenses.

Conflicts of Interest and Consequences

Board members can be removed from office for either of two main conflicts of interest. The first ground for removal of a board member is for a financial conflict of interest where a board member receives, directly or indirectly, any financial benefit from the district other than permitted per diems and expenses. Therefore, anytime a board member is aware that he will receive a financial benefit from the district where he serves, he should evaluate whether a conflict could occur. Financial conflicts can occur on the day of the election or thereafter. For example, if an employee of the district ran for the board but waited to resign until after the election to see if she won, it would be a conflict as the member would have a financial interest in the district on the day of the election. Other examples of possible financial conflicts:

- ❖ A school board member who is an owner or partner of a firm selling supplies or insurance to the school board. It's immaterial whether the amount of business involved is small and that full value was given.
- ❖ A board member who purchased a building and rented it to the board for use as a superintendent's office.
- ❖ A person who was interested in the sale of school bus services to the board of education on Election Day.
- ❖ A board member who was president of a corporation that sold merchandise to the school board.
- ❖ A board member who was sales representative of a company that sold paint to the district and received a commission on the sales.

Disqualification of a member because of interest in the sale of supplies or services to the school district is confined to monetary benefit that goes directly or indirectly to the member. If a spouse of a board member receives funds from the school district, this also may be considered a conflict for the board member, as the board member “indirectly” received the benefit. The indirect benefit is not always obvious. For example, if a member has a minor child who still lives at home with the member and the district proposes to pay the child for a small service during the summer, it may be deemed a financial conflict for the member as the assumption is the member indirectly benefited from the minor child’s receipt of additional living expenses from the district.

The second main conflict of interest is called an incompatible office. The Kentucky Constitution provides that no person shall, at the same time, be a state officer and an officer or employee of any county, city, town, or other municipality. Because a school board member legally is a state officer, the member cannot be a county or municipal officer or employee. A board member is disqualified when the member accepts such appointment. Examples of offices that have been found to be incompatible with school board membership include, but are not limited to, the following:

- ❖ Member of a county board of health
- ❖ Board member or superintendent of a city or county children’s home
- ❖ City council member
- ❖ County election commissioner
- ❖ Member of a county board of supervisors
- ❖ County tax commissioner
- ❖ Magistrate
- ❖ Deputy sheriff

In addition, the courts have held that a teacher under contract is not eligible to serve on the school board in the same district that employs him. However, a teacher is eligible to serve as a school board member in a district where he is not under contract. A retired teacher is eligible to become a member of the board of education, if other qualifications are met.

Kentucky law does not prevent someone from being a state officer and a state employee at the same time. Therefore, school board membership has been held compatible with state employment, such as inspector in the state Department of Motor Vehicles, state parole officer, and maintenance supervisor of state-maintained roads. However, board members are prohibited from holding a second office that requires taking the state constitutional oath. Membership on many state boards, including higher education boards, may require the constitutional oath.

A board member can become a candidate for another political office and continue to serve on the board of education. However, if she wins the election she will be required to resign from the board of education before assuming the second office.

There are other reasons why a board member might be removed from office, such as no longer meeting the essential qualifications or no longer living in the required division or district, or having a relative within the defined category hired by the district. But the financial conflict and incompatible office conflict are the two main conflicts most often encountered.



QUESTION

Q. *What is the process for removing a board member?*

The attorney general may file an action in circuit court to remove the board member from office. Under a separate administrative process (KRS 156.132), the commissioner of education can recommend the removal of a local board member to the state Board of Education when the commissioner has reason to believe the board member is guilty of immorality, misconduct in office, incompetence, willful neglect of duty, or nonfeasance. The state board, by a majority vote of its members, can bring charges without the recommendation of the commissioner. The board member against whom the commissioner issues written charges must be provided with the charges and notified of the date and place to appear before the state board to answer the charges. The board member can be represented by counsel and subpoena witnesses. The decision of the state board can be appealed to the circuit court and the state court of appeals.

Some controlling statutes and regulations for this chapter: KRS 118.315; KRS 156.132; KRS 158; KRS 160.160; KRS 160.180; KRS 160.190; KRS 160.210; KRS 160.270; KRS 160.280; 160.290; KRS 160.345; KRS 160.350; KRS 160.440; KRS 160.460-500; 161.164; 702 KAR 1:115