

INSTITUTIONAL GOVERNANCE

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6.1 OVERVIEW

The concept of “shared governance” is essential to understanding the administration of schools and colleges. As frequently used in higher-education circles, *shared governance* usually means participation in institutional decision-making by all the major constituencies of faculty, staff, and students. And, even if the term is not much used in K-12 education, the reality of shared governance pervades that sector—in the form of actual participation by multiple constituencies in governance.

Shared governance creates a complex institutional reality in which a board of trustees or a board of education nearly always has final legal decision-making authority, a professional staff carries out institutional policy and operations on a day-to-day basis, and other constituencies weigh in on

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many important matters. Thus, collective-bargaining contracts and state statutes frequently grant teachers and other employee groups a voice in decision making. And, as a practical matter, both students and parents must have input into, and evince some level of agreement with, governance decisions. Outside the collective-bargaining context, faculty generally are responsible for making decisions about curriculum, including subject matter and instructional methodology, and academic standards, such as admission, retention, and graduation standards.

This chapter discusses the most important legal problems flowing from institutional governance. Section 6.2 goes to the head of the institutional hierarchy by focusing on the role of the board of trustees or district school board. The section discusses how the performance of vitally important governance activities by board members can expose them to liability—especially for conflicts of interest. The section concludes with practical suggestions for how administrators can improve board functioning, thereby reducing institutional liability.

Section 6.3 looks at the legal problems arising under state statutes when public-institution boards meet, and when boards and administrators take actions subject to public disclosure. Section 6.4 discusses the troubling challenge to institutional governance that arises when an institution's financial health is less than robust. The section describes how the board and key administrators can work effectively to manage termination decisions during a period of institutional financial exigency.