

Dispelling the Myth of Home Rule

Local Power in Greater Boston

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4. Home Rule in Action: Education

“The town has no control really over the schools. The school committee sets broad guidelines and controls operation. The town meeting does approve the school committee’s budget, but they have no control over where the money goes, how many teachers go where, and what programs are funded and how much.”

—Public official from Arlington

Of all the services that municipal governments offer, education is the one that is most commonly seen as a local issue. These days, however, the growing demand for better education, combined with the increasing popularity of alternatives to public schools, have altered the connection between education and local communities. These developments have not eliminated the influence local officials have over the public schools. But they have made even clearer what had already been the case: that local officials do not have anything like autonomous control over the schools within their borders.

No one would dispute the intrinsic value of education. But municipalities care about education for reasons other than the importance they rightly place on instructing their young people. They recognize that the quality of education is inextricably connected to the perceived “value” of their municipality. Most families looking for homes factor a city or town’s perceived educational quality into the purchase price of the house they buy. Homes are often chosen as much for the value of the community and its environment as for the value of the house itself. As a result, property values, from which property taxes are derived, imply and encompass the cost of the education provided within the municipality. A demonstration of this inter-relationship can be seen in the impact that objective measures of educational quality have on municipal growth, development, and revenue. After the Massachusetts Comprehensive Assessment System (MCAS)¹ results of 2002 were announced, realtors in Walpole were eager to begin using their town’s recent climb to give them an edge in pitching their property. Similarly, town officials in Rockport, whose rank climbed from 101st to 51st in the state, were hopeful that “property values will similarly climb.”²

Just as education affects development and property values, development and property values affect education. Education is funded primarily on a local level,³ and educational quality is thus significantly tied to property tax receipts. Even though the state has sought to minimize school inequality by distributing state aid to equalize educational funding, older municipalities with a small local tax

base (such as Salem and Lynn) still spend less than the regional average.⁴ Studies indicate that rapidly developing bedroom communities also spend below the regional average per student (Boxborough and Northborough are examples).⁵ A town official from Wilmington told us how the “growth of the town during the 1990s put a lot of pressure on the schools,” a fact that has “presented a financial problem.” On a related point, officials from Middleton and Somerville noted that the fear that uncontrolled growth would put pressure on local schools contributed to the criticism of Chapter 40B’s affordable housing requirement.

Given this important inter-relationship between education and municipal vitality, it is significant that—with the important exception of Boston itself—cities and towns do not control their own schools. Instead, under state law, schools are under the control of elected school committees—committees that are sometimes elected by the residents of a single municipality and sometimes operated on a regional basis. This fracturing of the local government structure between municipalities and school committees raises the question of what “home rule” on education issues might mean in Massachusetts. This question will be explored in the first section below. We then turn to the extent of local control on educational issues even by school committees. Because the quality of education has become an ever more important issue for the Commonwealth of Massachusetts, the role of the state in establishing educational policy has become increasingly significant. The result, epitomized by the Educational Reform Act of 1993, has been to subject local school committees and local schools to more rigid state requirements. Finally, we analyze another important development affecting the extent of local power on education issues—the rise of charter schools. At one level, charter schools can be seen as competitors to the local public schools: they are innovative alternatives funded by the locality in which the student lives. On another level, charter schools are part of the public education system itself. The state requires, for example, that municipalities provide transportation for school children attending charter schools. Here, again, the state plays a dramatic role in determining educational policy that significantly affects the region’s localities.

SCHOOLS AND THE MUNICIPALITY

The relationship between education and the municipality is circular and symbiotic: education affects how the municipality develops and is itself affected by the growth that it influences. Yet in Massachusetts, school committees rather than municipalities are responsible for the management of local public schools. Unless otherwise provided for by law, school committees consist of three or more members elected at large. They are independent governing bodies within a municipality (or, in the case of a regional school district, several municipalities).⁶ Except in the City of Boston, they are not under the control of city government. (In some cities, either because they follow a standard plan or because—as in Malden—

they have obtained special legislation, the mayor has a permanent seat on the committee.) School committees have the power, within the bounds established by state statutes or the Department of Education, to operate the public schools. They regulate student attendance, set the curriculum, hire and fire teachers and other employees, and determine when schools should be closed. Cities and towns do not have the power to do any of these things.

The political isolation of school committees from municipalities is intentional. As the Massachusetts Supreme Judicial Court explained: “The policy of the commonwealth from early times has been to establish a board elected directly by the people separate from other governing boards . . . and to place the control of the public schools within the jurisdiction of that body unhampered as to the details of administration and not subject to review by any other board or tribunal”⁷ Of course, despite the breadth of this language, school committees are very much under the supervision of the state Department of Education. The body that seems to be primarily separated from the school committees, then, is the municipality.

The fractured relationship between school committees and the municipalities they serve raises questions about the definition of “local” control of schools. In earlier parts of this report, we noted the split in the way the “local” will is determined between decisions made by the municipal government and by referendum. Here, we note another split: between municipal government and other kinds of local government institutions. Education is by no means the only issue under the control of a state-created institution separate from the elected municipal government. (Transportation is an example, among many others, of an issue allocated to public authorities rather than to municipal governments.) Education is unusual, however, because school committees, unlike other state-created institutions, are popularly elected. Still, the fact that they are legally splintered from municipal governments complicates the question whether they properly embody the notion of local control of education. School committees tend to work more closely with the state Department of Education than with municipal officials or the public at large. And they have more formal contacts with, and are subject to more regulations by, the state than is the city or town government. If the school committee and municipal officials disagree about educational policy—and if both views diverge from public opinion within the municipality as a whole— which of the three positions represents the “local” point of view?

The division between municipal governments and school committees has additional significant consequences for the relevance of the concept of home rule to education issues. School committees are responsible for school management, but they are not given home rule power by the Home Rule Amendment. Only cities and towns are given home rule power by the Home Rule Amendment. Yet, except in Boston, cities and towns do not run the schools. Thus, to put the mat-

ter simply: except in Boston, there is no “home rule” in Massachusetts as far as education is concerned.⁸

There are, however, two important legally structured relationships between school committees and municipalities: the approval of the annual budget and of school construction projects. School committees are required to submit a budget proposal to the municipality, and the city council or the town meeting can approve or modify the total amount of funds requested in the budget. But the law makes clear that the municipal legislature cannot fine-tune the budget; it can do no more than make nonbinding recommendations:

In acting on appropriations for educational costs, the city or town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restrictions on such appropriations. . . . The city or town may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations. The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation.⁹

School construction is also under the general purview of the municipal administration because it deals with land use issues and requires budgetary allocations outside of the general operating expenses of the schools.

Given that the primary intersection between municipal administrators and school committees concerns budget approvals, it is no surprise that financial support was the focus of almost all the education-related comments of the municipal officials we interviewed. Many municipal administrators were critical of policymakers for equating educational funding and educational quality. But others talked about the success of their schools in terms of the percentage of the municipal budget that has been allocated to them (Acton, Carlisle, Concord, Hamilton). This focus on educational funding as the benchmark for educational quality is illustrative of the deep split between the administration of local schools and other aspects of municipal governance.

Despite the importance of education to the welfare of the municipality, educational policies, programs, and curricula were rarely mentioned in our interviews. Some officials (from Marblehead and Somerville, for example) simply noted that they were not in a position to comment on education issues because education was under the purview of the school committees. Others directly commented on their lack of control or formal relationship with the local school committee. They noted that appointments of the leading educational officials in the district, from principal to superintendent, are essentially beyond the authority of the municipality. In the words of an official from Arlington:

The town has no control really over the schools. The school committee sets broad guidelines and controls operations. The town meeting does approve the school committee's budget, but they have no control over where the money goes, how many teachers go where, and what programs are funded and how much. Town meeting can approve or reduce the budget without altering anything within the budget. The town can control which schools get renovated first or what schools are built, but the operations are under the control of the school committee.

An official from Hull echoed this vision, stating that the primary "interaction is between the elected school board and the [state] Department of Education. Local power is limited."

The splintering of authority between the school committee and the municipality does more than limit the power of cities or towns to play an active role in influencing educational quality. It also creates confusion about who is responsible for improving the quality of local services unrelated to education. A large portion of a city's or town's expenditures is often used to pay for education to satisfy a school committee's budget request. That sizeable appropriation leaves the city or town with comparatively little revenue to spend on other local services. Local residents may nonetheless feel that they have spent a considerable amount of money in taxes with little to show for it. They then blame the city or town officials both for the failings they perceive in the local school system (which the city or town does not control) and for the inadequacy of other local services (which cities or towns may underfund in order to meet the budget request of the school committee). This dynamic led a respondent from Acton to argue that the state should establish two separate taxing systems, one administered by the town for non-education-related services and one administered by the school committees to pay for their budgets. On this view, towns and cities would be better off if they did not have to raise revenues to pay for education given the minimal influence on educational policy state law gives them. Such a system would ensure "that we don't get held accountable for other stuff when all of the money goes to schools."

As noted above, Boston is in some respects an exception to the general structure just described.¹⁰ In 1991, after the citizens of Boston had approved a non-binding referendum supporting the change, the state legislature approved Boston's home rule petition replacing its elected school committee with a seven-person committee appointed by the mayor. The City of Boston thus has an unusual amount of control over its schools. But that control is limited even by the terms of the legislation that authorized the creation of the appointed committee. The state legislation specified (among other things) that the new school committee have seven members, that the members have staggered terms of office, and that there be a 13-member nominating panel (organized in detail by

the legislation) empowered to present a list of candidates from which the mayor selects committee members. This structure can only be modified by another state legislative enactment. Given this state-defined structure, it would be an overstatement to suggest that, even in Boston, the city has the kind of control over education that it can exercise over other issues.

SCHOOLS AND THE STATE

Education in Massachusetts is a duty imposed upon the state government by the state constitution.¹¹ Although much of that duty has been delegated to school committees, the state—namely, the state Department of Education and the state Board of Education—retains significant control over the way in which school committees provide education to their constituents. In an earlier section of this report, we referred to the fact that the Education Reform Act established a minimum level of funding for every school district in the state.¹² In this section, we concentrate on another important ingredient in the Education Reform Act: the Act contains a host of mandates designed to improve school quality and accountability throughout the state.

Under the Act, the Department and Board of Education are required to establish curriculum frameworks in the core subjects of mathematics, science and technology, history and social sciences, English, foreign languages, and the arts.¹³ They are authorized to provide standards for subjects ranging from nutrition to the Federalist Papers and from computer skills to AIDS. (The legislature itself has mandated education on subjects ranging from the bill of rights to physical education.)¹⁴ They set educator certification standards, provide for the length of the school day and school year, and have the power to declare a school district “under-performing” and, if so, intervene in its operation.¹⁵ And, most famously, they have established the Massachusetts Comprehensive Assessment System (MCAS). These are simply examples of the multitude of state-wide requirements for teachers and students imposed by the state. Even though school committees have significant control over the day-to-day operations of their schools, the Education Reform Act has thus moved education a significant way towards state control of education. (In 2002, the No Child Left Behind Act¹⁶ increased federal intervention into school policy as well.)

Many of the most controversial state-generated educational mandates do not arise directly out of legislative decisions. They derive instead from requirements imposed on school committees through administrative decisions by the Department of Education. Many of these decisions take advantage of municipal dependence on state aid. One of the most controversial educational standards is the implementation of the MCAS as the state-wide graduation requirement for all students wishing to receive a high school degree. Although a testing and assessment regime like the MCAS was adopted by the legislature as a part of the

Educational Reform Act, the Act simply identified the test as a tool to compare municipal education quality, help formulate better educational programs, and “inform teachers, parents, administrators and the students themselves, as to individual academic performance.”¹⁷ The Department of Education, however, has formally requested that local school districts adopt the MCAS as an official and uniform graduation requirement—a request that comes in a tone more like that of a mandate than a choice. Financial dependence renders localities vulnerable to these kinds of requests. As the *Boston Globe* put it: “The state Department of Education has issued a stern warning: Comply or you could face punitive action—a visit from the attorney general or the loss of state and federal funds.”¹⁸ There are also indications that state aid has created a sense of moral or psychological indebtedness to the state. A Manchester official expressed this idea by stating: “I have tremendous difficulty with school systems that say ‘we are part of the state system’ and accept state funding, and then refuse to do what the [state] regulations require.”¹⁹ Even though the merits of the MCAS are still widely debated, it is clear that the debate is not a local debate.²⁰

Most of the municipal officials we interviewed were critical of the state’s involvement in education. Much of this criticism was directed at state educational mandates, especially those that required municipal spending but did not guarantee state reimbursements. These officials stressed that other programs would have to be sacrificed to comply with the state requirements. A town administrator from Medfield, after noting the town’s reliance on state educational funding, disapproved of the multitude of reports the town must file documenting everything on which they spend their money. The town is not even allowed to establish its tax rate, he said, until the Department of Education certifies that enough money was being spent on education. A spokesman for Peabody, expressing concerns about the difficulties of budgeting the town’s funds in accordance with state requirements, argued that the municipalities should be able to determine the standards and shape of their schools. This sentiment mirrored that of an official from Pembroke when he asked: “Shouldn’t Pembroke make the decisions of how much money they want to spend on their school system?”

In addition to comments on how state restrictions affect municipal budgets, there were also remarks regarding the state’s control of education itself. An administrator from Salem, although receptive to the idea that the state should establish general guidelines and parameters in education, said that actual decision making regarding the implementation of those guidelines “must be a bottom-up arrangement.” An official from Gloucester stated that “the state definitely intrudes more than they should . . . it’s not good to have every community in lock-step . . . [but that] is where Massachusetts seems to be going.” Rigidity was also an issue for Medfield: “[The state has] one approach for everyone; what works in Chelsea probably won’t work in Medfield, but they don’t give us any flexibility.”

An official from Cohasset said simply that he was of the opinion that there is “not many local powers to deal with education.”

Many municipal officials recognized that the state was a significant partner in providing funds for education and school-related development. In order to equalize the disparities between municipal fiscal capacity, they pointed out, the state provides aid under a need-based formula that attempts to help all schools meet the required spending minimum. There is also significant state support for building new schools and renovating existing schools.²¹ Like other situations in which state aid is involved, municipal reaction to this aid was mixed. Some municipal officials, like one from Lynn, were grateful to the state for providing much needed resources: “With this funding, Lynn has had the power and resources to make significant improvements in education.” A city official from Medford also praised the “generousness” of the state in providing more resources to their city. Others, although happy to get state aid and resources, recognized the limitations imposed by state grants. A spokesman for Peabody commented on potential problems arising since state aid is “being cut and the time before cities are reimbursed is getting longer.”

It is worth re-emphasizing that, although the state regulates a school’s curriculum, spending, and teacher qualification requirements, important aspects of school operations are still independently regulated by school committees. In some areas, school committees are given more latitude than the municipality itself. Cambridge, for example, recently became one of the few municipalities in the nation to begin desegregating their schools primarily on the basis of economic status rather than race.²²

LOCAL PUBLIC SCHOOLS AND ALTERNATIVES

This report has already noted that, in addition to the consolidation of educational policy in the hands of the state, there is a splintering of local educational responsibility between municipalities (the budget) and school committees (managing the schools). The splintering of local public education, however, is not limited to the relationship between the municipality and the school committee. It is also now in evidence in the relationship between local public schools and charter schools. Here, too, state law sharply limits the control that municipalities have over what is perhaps the most important service provided within their borders.

Charter schools are not the only mechanism Massachusetts has adopted to expand the local educational options available to students and parents. The state has also established a school choice program designed to allow students to enroll in out-of-district schools as long as the receiving school committee has places available and is willing to receive them.²³ But charter schools are an even more pervasive educational alternative. In 2001, there were 43 charter schools in Massachusetts.²⁴ These charter schools have expanded the educational options

beyond the traditional public school in ways that have produced significant benefits. At the same time, they are one more indication that the traditional concept of a locally controlled educational regime is being transformed.

Massachusetts state law authorizes two different types of charter schools.²⁵ A “commonwealth charter school” is a public school, proposed and sponsored by teachers, parents, or a non-profit business or corporate entity, that operates under a charter issued by the state Board of Education. Commonwealth charter schools are governed by an independent board of trustees and operate “independently of any school committee.”²⁶ A “Horace Mann charter school” is a public school proposed by a local school committee; it can even be a subdivision of an existing public school. The charter of a Horace Mann charter school is also granted by the state Board of Education and it too is operated by a board of trustees “independent of the school committee” that sponsors it.²⁷ Neither the municipal government nor the school committee, then, has formal influence over either kind of charter school.

Even though the state—rather than the city or town where the charter school is located—determines whether a charter school may open, charter schools have a significant impact on the municipal budget. State law ensures that every student that charter schools admit reduces the local educational aid received by the municipality. This draining of local aid results from a complex state-established formula transferring a portion of that aid from the school committee to the charter school where that student is enrolled. Local school committees have been critical of the current formula on the grounds that it neglects the fact that the cost of maintaining a school cannot be reduced to per-pupil spending—losing one student, and the funds associated with that student, does not save the public school the amount being transferred. Moreover, since high school students are more expensive to educate than K–8 students, and since most charter schools have concentrated on K–8 education, the formula gives charter schools more than a traditional public K–8 school would be allocated for the same students.²⁸

Despite the fact that charter schools are administratively outside the control of both municipal governments and local school committees, they are public schools. Their employees and administrators are agents of the state; they are subject to most of the same rules applicable to other public schools; they cannot discriminate in admissions on the grounds of traditional categories like race or sex or on the grounds of academic achievement; they must give admissions preference to students from the city or town in which they are located; they are funded by the city or town budget. Students attending charter schools are also entitled to public transportation administered and financed by municipal governments.²⁹

Notwithstanding this classification of charter schools as public schools, a municipality’s interaction with them is more restricted than its interaction with the traditional local public schools. The boards of trustees for charter schools are

not elected at large. As a result, they are not accountable to the citizenry of the municipality as a whole. Moreover, charter schools are even more under state control than are school committees. Although they set their own education policies (within the bounds established by the state), their charters are granted by the state and their budget allocated according to state formulas. Moreover, their charters last only for five years and are subject to being revoked:

The board [of education] may revoke a school's charter if the school has not fulfilled any conditions imposed by the board in connection with the grant of the charter or the school has violated any provision of its charter. The board may place the charter school on a probationary status to allow the implementation of a remedial plan after which, if said plan is unsuccessful, the charter may be summarily revoked.³⁰

Both the independence of charter schools from the municipality and their connection to the state thus increases the fragmentation that characterizes the formulation of educational policy for the public schools in the Boston region.

These observations are not meant to disparage the benefits that charter schools offer by providing children with alternative educational opportunities. Nor are they designed to undermine the value charter schools provide traditional public schools when, as required by state law, they share their experimental models with the public schools at large. The point being made here is more limited. Like the separation of school committees from municipal governments and like the influence of the state on educational policy, charter schools make problematic the relevance of the concept of "home rule" in the context of education.