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MODULE SEVEN

UNIT TWO

Legal Basis of School Governance

Introduction

As we have seen in Unit 1, the governance of schools does not take place in a vacuum or in a random way but rather occurs within the context of laws, regulations, administrative instructions and directives which issue from government. The constitutional responsibility for educational provision rests with the state, and the government as an agency of the state has the authority to formulate policies and enact laws concerning education, raise revenues and operate government schools or devolve powers to other agencies or individuals to open and operate aided or private schools. It is these laws enacted by government, expressed in acts, decrees or ordinances, and reflected in various educational by-laws, legislative and executive instruments and other regulations, which constitute the legal basis for school governance.

The various laws and regulations on education, which themselves derive from educational policies formulated by government, are translated into administrative instructions, directives and guidelines which determine how schools are governed.

The main purpose of this unit is to assist the school head to understand the sources of authority which determine how the school is to be governed, and through this, to be guided as an educational manager.

Individual study time: 3 hours

Learning outcomes

At the end of this unit, you should be able to:

- explain what an education policy is
- explain what education laws are, and identify such acts, decrees, ordinances and by-laws as affect the governance of your school
- describe what executive and legislative instruments on education are and how they affect the governance of your school
- describe what administrative instructions are and how they affect the operations of your school
- explain why your school requires its own policies and regulations, what these are, and what procedures you have for their further development.

Education policies

Activity 2.1

Considering the way in which your school is structured and the nature of its programmes, identify and describe how these have been directly determined by government policy.

20 minutes

Comments

Some of the ways in which school structures and programmes have been determined through government policies include the following:

- the length of each cycle in the education system: for example, in some countries the primary school cycle spans six years, and therefore, consists of Grades One to Six, while the secondary cycle spans five years and therefore consist of Grades Seven to Eleven
- the selection and content of subjects taught at each level
- the minimum qualifications of teachers at each level of the education system
- the age at which pupils start formal schooling
- the ownership of schools
- the nature and levels of school funding
- the size of classes.

Education policy is the overall plan laid down by a government embracing general goals and procedures in the provision of education. It is intended to guide and determine present and future decisions connected with schools and pupils, and the roles to be played by parents and other interested bodies. Education policies only become compulsory when included in legislation and enforced through the courts of law.

Education laws

Activity 2.2

In Unit 1 you should have listed the education acts, decrees or ordinances which determine the way your school is operated.

- (1) In what ways have these acts or laws affected the operation of your school?
- (2) To what extent have these acts or laws been successful in achieving their objectives in the operation of your school?

25 minutes

Comments

For major government educational policies to be implemented, laws in the form of acts or decrees are promulgated to back them. These laws are the rules by which each country is governed and which every citizen should respect. It is important to note that such laws, including those on education, do not become static, but are amended or changed to suit new circumstances as a country develops.

In some situations it is possible to find schools which are not operating within the law. For example, some schools have class sizes which are larger than those prescribed by law. It is often quite difficult to provide the national curriculum, particularly in practical subjects and in languages. Another problem is school finance, where the government sets limits on how schools may obtain funding, but where funds have to be raised due to a severe lack of resources.

School heads must know what the law is and they must strive by every means to operate within it. On the other hand law makers must understand the realities of educational provision and must pass laws which make sense.

The first legal instruments on education were education ordinances passed by the colonial administrations. An education ordinance was an order, rule or regulation established by an authority as a permanent mode of action in the field of education. Since Independence the equivalent legal instruments are education acts passed by National Assemblies, or education decrees when issued by military regimes.

It is also important to note that besides major laws in the form of acts or decrees on education which are national in character, there may be other subordinate laws, made by local authorities or local government bodies, which affect education in a specific area. These are known as by-laws. In most countries local authorities have wide powers to make by-laws on such matters as primary education, health care and sanitation. It is, therefore, important for you as a school head to know what by-laws on education are in force in the area in which your school is located.

Executive and legislative instruments on education

An executive instrument is a certificate issued by the executive branch of government for a certain order to be carried out in connection with a specific issue. In the field of education, executive instruments are sometimes issued to acquire land for the construction of schools. The land earmarked for the construction of a new school to serve the population of an area might belong to an individual or a family who may not wish to release their land. If government feels that the establishment of a school on that piece of land is for the public good, then it will acquire the land through an executive instrument and due compensation will be paid to the owner.

A legislative instrument is an order issued by the legislature on an aspect of national importance which has general application. This order which has the force of law regulates activities within a specific domain of national life. A legislative instrument may be issued to establish decentralised political administration in a country in which local authorities are given certain functions and powers with respect to the provision of education.

Activity 2.3

In Unit 1 you should have listed the executive and legislative instruments which affect schools in your country.

To what extent have these executive and legislative instruments influenced the operations of schools in your country?

Comments

Perhaps the area in which changes in legislation are having the greatest influence on schools is in the level of authority being delegated to local or district governments with regard to the operation of education. Decisions about the opening, location, size and closure of schools are increasingly being made locally. Similarly more and more matters to do with the employment of teachers are being handled locally. Of course, current practices vary a lot between countries, but the general trend is for more delegated authority to local authorities and to schools. We return to this point in Unit 4 (see Activity 4.4).

Administrative instructions

One major function of government ministries or departments involves the application of general policy to particular areas or activities.

Many administrative functions permit the exercise of discretion by those in positions of authority, hence powers of policy execution are exercised by a large number of officials, from the top hierarchy of the Ministry of Education down to heads and classroom teachers, each of whom is given some powers of discretion. Thus senior officials usually issue administrative instructions to schools in the form of directives. These instructions are issued through circular letters, or at staff meetings or even by phone.

Activity 2.4

Considering the administrative instructions which have been recently received in your school, list them out:

- according to types;
- according to source.

Comments

One of the problems with administrative instructions is keeping an up-to-date file of them and in ensuring that the staff are informed of them. You should check how well these are being kept in your school and how well your procedures for keeping your staff informed are working.

School policies and regulations

The extent to which officials at different levels within the education hierarchy have the power to form policies and issue directives diminishes from top to bottom. But the distribution of discretionary powers is not fixed and at present in the 1990s, there is a trend in most countries to devolve more powers and responsibilities to heads of schools. Thus heads have traditionally been expected just to do as they were told; to react to the directives given by the central authority. Now, more often, heads are expected to be pro-active in developing, in consultation with others, policies and regulations for their own school and to implement these through school-based plans.

Activity 2.5

- (1) List three areas in which you, as head of your school, have developed policies and regulations to promote the development of your school.
- (2) Identify three more areas where you think school policies are needed, and explain what you intend to do to develop them.

30 minutes

Comments

Every school needs to have its own set of policies and regulations. You will already have regulations, or rules, governing the behaviour of pupils and procedures for setting standards of discipline, but do you explain the rationale or purpose of these in a school policy statement? Schools require policies in many areas for example, with regard to:

- homework
- pupils with learning difficulties
- assessment and promotion between classes
- reporting pupils' progress to parents
- co-curricular activities
- language in and across the curriculum.

If you feel you need to know more about how to manage change in your school, have a look at [Unit 8 in Module 2](#), Principles of Educational Management.

Summary

In this unit, we have looked at the issue of laws and regulations which underpin school governance. We have examined different kinds of laws which form the basis of school governance such as education acts, decrees and by-laws, and executive and legislative instruments. We have considered the nature of educational policies and how administrative instructions apply these to particular issues. Lastly, we have noted the importance of heads of school developing their own policies and regulations, as part of the process of school-based planning.

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