

A Study on the Local Education Autonomy System in the United States in relation to the Educational Superintendent

Jong-Ryeol Park*, Sang-Ouk Noe**

*Professor, Dept. of Police & Law, KwangJu Women's University, Gwangju, Korea

**Professor, Dept. of Police & Law, Joongbu University, Chngcheongnamdo, Korea

[Abstract]

The U.S. education policy making and execution process, in which residents can directly participate as members of state or local boards of education, without entrusting a small number of experts to decide on issues of sharply intertwined political interests, can be presumed that it played a role in preventing conflicts and disputes that may arise due to differences of opinion or differences in the interpretation of laws and regulations between subjects.

Such a consensus system in the United States suggests a supplementary point to the local education administration system in Korea, where conflicts between various educational entities are occurring because of the current excessive dependence on one superintendent of education.

▶ **Key words:** Educational Superintendent, The Minister of Education, Local Education Autonomy Act, Local Education Autonomy System of the United State, Federal Amendment

[요 약]

미국에서는 소수의 전문가에게 정치적 이해관계가 첨예하게 얽혀 있는 문제의 결정을 전적으로 위임하지 않고, 주민이 직접 주 교육위원회나 지역 교육위원회의 구성원으로 참여할 수 있는 미국의 교육정책결정 및 집행과정은 다양한 교육주체 간에 이견이나 법령해석 차이 등으로 인해 발생할 수 있는 갈등과 분쟁을 사전에 예방하는 역할을 수행했다고 추정할 수 있다.

이러한 미국의 합의제는 현재 교육감 1인에게 과도하게 좌우되어 다양한 교육주체 간의 갈등이 발생하고 있는 우리나라 지방교육행정체제에 대한 보완점을 시사하는 것이다.

▶ **주제어:** 교육감, 교육부장관, 지방교육자치에 관한 법률, 미국의 지방교육자치제도, 연방수정헌법

• First Author: Jong-Ryeol Park, Corresponding Author: Sang-Ouk Noe
*Jong-Ryeol Park (park3822@kwu.ac.kr), Dept. of Police & Law, KwangJu Women's University
**Sang-Ouk Noe (nosang2424@daum.net), Dept. of Police & Law, Joongbu University
• Received: 2022. 12. 28, Revised: 2023. 02. 06, Accepted: 2023. 02. 16.

I. Introduction

Since the introduction of the local education autonomy system, discussions have continued for practical education autonomy. However, as various conflicts are expressed, we are facing a crisis that shakes the foundation of education. The 「Local Education Autonomy Act」 enacted in 1991 continues to be subject to conflicts and disputes due to the ambiguity of laws and regulations.

The local education autonomy system must ensure political neutrality and educational independence in accordance with Article 31 of the 「Constitution」 and Article 14, Paragraph 1 of the 「Framework Act on Education. To achieve political neutrality and independence in education, central and local agencies and general and educational administrative agencies are separated. However, political neutrality and autonomy of education are not ensured due to differences in the perceptions of stakeholders regarding the distribution of powers stipulated by the law, and the overlapping or ambiguous boundaries of the prescribed powers.

Many of the elected superintendents conflict with the central government due to problems such as centralization of legal affairs and authority, ambiguous regulations on the superintendent's own authority, and the incompleteness of the current education autonomy system. This has even spread to legal disputes, which is acting as a factor that raises people's anxiety and distrust in education.

Therefore, this study explore or analysis the education autonomy system and conflicts in the United States, which is implementing the local education autonomy system to find a way to resolve conflicts and disputes that occur between the Minister of Education and the educational superintendent.

Through these efforts and research, it is hoped that a mechanism for preventing conflict will be established, which solves our education problem where the process until unnecessary conflicts and disputes are resolved according to the court's

decision is too long and which minimizes the damage caused by the delay in the implementation of education policies due to the conflict of authority.

II. Local Education Autonomy System of the United States

One of the main functions of each state in the United States is an education-related authority[1], and education-related regulations are stipulated in the state constitution. Among the details of education-related regulations stipulated in the state constitution, the election of the superintendent and the establishment and authority of the state education committee need to be studied. In the United States, superintendents are appointed by the Board of Education or the Governor or directly elected by residence, and members of the State Board of Education are appointed by the governor or state legislature or directly elected by residence. The State Board of Education, which has the power to appoint the superintendent, is established by the state constitution and legislation of the state legislature and the State Board of Education is legally empowered to oversee the education system. Unlike in Korea, where only an all-out direct system is elected, the educational superintendent is elected in three different ways for each state in the United States. Although there are differences in methods, the recognition that the state legislative power should be responsible for education is a common perception of public education in the United States.

In the United States, the state government is responsible for the final and supreme responsibility for education according to Article 10 of the 「Federal Amendment」, and various local education administrative systems are operated by state and school district.[2] In particular, in the United States, the local education administration is operated as a separate institution from a general

administration. In accordance with the state constitution and state law, special local governments in the nature of quasi-local governments, independent of local governments, have been established and these special local governments operate the education of the local school district under the guidance and supervision of the State Board of Education.

As such, education in the United States is largely the responsibility of the state and local governments (city or county) rather than the federal government, so the state or local government (regional school district) is in charge of school establishment, curriculum development, registration, and graduation. In other words, the state government has supreme and final responsibility for education (「Federal Amendment」 Article 10), and a very diverse local education administrative system is formed and operated for each state, so it is difficult to unequivocally discuss the role and function of the educational superintendent and the method of election. This is because each state authorizes the educational superintendent and a member of Board of Education a different scope of powers and responsibilities and has a different method of election.

The education administration system in the United States has a vertical structure that connects the federal government, state government, regional offices of education, and unit schools. Among them, the federal government is mainly responsible for financial support for education. Public education is governed by the state government according to the Article 10 of 「Amendment to the Constitution」, and the three major agencies responsible for primary and secondary education are the state legislature, the state educational superintendent, and the state education board. In most states, the governor shares educational powers with the elected Chief State School Officer and the elected State Board of Education, and only a few states have a superintendent appointed by

the governor or have a board of education that elects the superintendent. The legal basis for US education administration can be found in the Article 10 of 「Amendment to the Constitution」 of 1791 and the individual state constitutions. A typical example is Chapter 11, Sections 1 and 2 of New York State.[3]

In the U.S. local education autonomy system, the U.S. Federal Ministry of Education takes on a role as a support organization for finance and research, away from the core role of education administration, and the state government has the primary power to education and the federal government has a secondary power. In the United States, the movement to improve the quality of public education has been continuously attempted at the federal level as well, and there is a trend of expanding the federal authority over education with the federal constitutional investigatory power, fiscal spending right, interstate commerce clause, and enabling clause. In particular, there is an opinion that it is possible to enact federal laws on all educational activities through a broad interpretation of interstate commerce clause.[4]

However, the federal government of the United States rarely engages in education issues in accordance with the long tradition of the United States that education is the sole authority of the state government, and it only indirectly engages in education policies, through financial support, even if it is involved. Rather, in recent years, the involvement of the judiciary in education among the federal government has been increasing. Such involvement of the judiciary in the educational field was triggered by the Brown case in 1954, in which the Supreme Court found that the distinction between white schools and black schools itself was racial discrimination (Article 14, Amendment) under the federal constitution and ordered the prompt correction of the racial discrimination practices.

In the US local education autonomy system, education is included in the state's authority, and one of the main functions of each state is

education authority. All states have education-related regulations in the state constitution, and various systems are operated depending on the background of the establishment of the regulations, but there is one thing in common that the state legislative power is responsible for education. As such, the state education administration, which is the core of education in the United States, consists of the state legislature, the governor, the state education department, the state education board, and the state educational superintendent, and their roles are usually as follows.

The state legislature has basic responsibility for the establishment and maintenance of public schools and is responsible for enacting and revising education-related laws, determining education-related budgets, collecting education-related taxes, establishing and abolishing school districts, and collecting taxes from school districts. The budget is reviewed by the State Senate's subcommittee on finance, and laws are deliberated by the subcommittee on education. The governor usually has the power to submit educational budgets to the state legislature, and in some states, the governor appoints state education board members and state educational superintendents. The state education department is an administrative organization directly related to the local school system as an educational executive body.[5]

The educational superintendent and the Board of Education are very important elements in the local education autonomy in the United States. The method of electing the educational superintendent and the members of the Board of Education has been developed differently in each state, and as described above, three frameworks such as the direct election by residence, indirect election by the Board of Education and appointment by the governor have existed to this day. Among them, the most preferred method is the indirect election system by the Board of Education, and the

appointment by the government has been gradually increasing, and the direct election by the residence has been decreasing.[6]

The State Board of Education is established by the state constitution or by the state legislature and, as an institution that establishes rules and ordinances necessary for the fulfillment of educational responsibilities, given by the Constitution and state laws, it is in charge of establishment of qualification standards for teachers, approval of the curriculum and the evaluation of the educational programs. Board members are appointed by the governor or elected through a referendum. In rare cases, in some states, board members are appointed by the state legislature. The State Board of Education is mandated by the state legislature and is responsible for policy making and enforcement regarding public education as a whole. The number of education committee members is 7-15, and the method of election varies from state to state. In 35 states, they are appointed by the governor, in 11 states, they are elected by the residence (five party-based states and six non-party-based states), in three states, they are appointed by the state legislature and in one state, they are elected by the local education committee. The State Board of Education generally performs deliberation and decision-making and advisory functions on education, but important educational policy decisions are usually finalized by the state legislature through the educational superintendent and the governor.[7]

A school districts is a quasi-local government district that operates education in the area under the guidance and supervision of the State Board of Education in accordance with the state constitution and state law, Vol. 14 No. 1, 2013. (Special Local Government), the main executive and decision-making body is the Local Board of Education. First established in Massachusetts in 1650, the local school district board of education has the characteristics of both a final

decision-making body and a consensus system enforcement body and has the authority to appoint superintendents, school administrators, and teachers, to decide on educational programs, to develop educational policies, to form budgets, to enact ordinances, to collect taxes, to designate holidays, etc. The number of education members of the school district's education committee is 7 to 9, and the term of office is 4 years, and most of the elections are in the form of direct election by residence, but in some cases, the head of the committee appoints some or all of them.

Meanwhile, the local superintendent is in charge of the operation and education of each school together with the principal and teachers, but its roles and positions are also to be subordinated to the school district's education committee as the committee hires it and can dismiss it during its term of office. However, in recent years, there is a clear difference between metropolitan area school districts and small city area school districts in the degree of unification of education administration and general administration at the regional school district level. In most small towns, education autonomous administration is separate from general autonomous administration, with residents directly electing the education committee members and the education committee having independent budget and tax collection rights. On the other hand, in regional school districts in large cities, education autonomous administration is often integrated into general autonomous administration, such as the mayor directly appoints a member of the education committee, or the educational superintendent and the education budget also depends on the city government.

There was no unified central government educational institution in the United States until 1979, and the first federal government-level central educational administrative organization, the Department of Education, was created in 1979. Since then, American education has been based on the principle of decentralization. The State Board of

Education directly operates the education system with the authority of the state legislature to administer education[8] and the state education board system in 49 states except Wisconsin shows just how well decentralized the US education administration is.

Education is the function of the state government, and state law delegates the authority to operate the school system in the community to the local school district. Therefore, the US education policy has a characteristic of 'diverse educational system' as each state and local government creates and operates an educational administrative system that meets their own educational conditions according to the characteristics of local school districts that are responsible for school management.

A representative example of the State Board of Education is the New York State Board of Education, which has the longest history as an autonomous educational institution in the United States. The New York State Board of Education, established in 1784 by the New York State Legislature for the purpose of revitalizing education, introduced a system of superintendents according to the School Act in 1821 and then adopted a system of appointing the superintendent through the personnel committee. In 1821, the superintendent was abolished, but, in 1904, it regained its position as chief administrator of the state board of education, and the superintendent's powers were much stronger than before. As the educational superintendent is given the authority to organize personnel and supervise elementary, middle, and high school education, the superintendent of the New York State Board of Education is currently exercising all administrative powers in all aspects of education in New York State.[9]

III. Issues and Aspects of the U.S. Local Educational Autonomy System

The issue in the US local education autonomy system is focused on the qualifications and powers of the educational superintendent. Qualifications for superintendents vary from state to state, but the basic goal is to appoint a person with educational experience and leadership skills. The Board of Education is composed of a non-specialist group, not an educational party with expertise, and the number of members and the method of the election of the Board of Education are applied differently according to the education policy of the state government.

In the United States, the educational superintendent corresponds to the 'head of education superintendent' in terms of the type of superintendent.[10] The State Superintendent of Public Instruction was first established in New York State in 1812, and as the name suggests, such as Chief Executive Officer, Secretary, Commissioner, the status varies from state to state. However, they usually hold the position of the head of the state education department or the executive officer of the state education board, and cooperate with the state education board to establish educational policies, award teacher qualifications, organize and distribute education budgets to regional offices of education, determine the term of compulsory education, etc. State superintendents are elected by the State Board of Education in 25 states, by the governor in 11 states, and by the people in 14 states (eight party-based states and six non-party-based states), and the superintendent, elected by the people, has independent powers and positions.[11]

Traditionally, in the United States, the state government is in charge of the final responsibility for education issues, and the state legislature has the primary responsibility for education-related tax collection, education-related budget resolution, enactment and amendment of laws, establishment

and maintenance of public schools, establishment and abolition of school districts, and tax ceilings. On the other hand, the United States Department of Education does not play the role of a central control tower for education like in Korea but provides financial or funding support for each state's education policy, or research that can increase the effectiveness of education policy as a supporting agency to support the state education policy.

However, since the enactment of the Elementary and Secondary Education Act in 1965, the debate over the role of the federal government in education issues has continued to this day. The conservative Republican government emphasizes the minimization of the federal government's role and insists on reducing educational financial support, while the reformist Democratic government emphasizes the strengthening of the federal government's role and insists on expanding educational financial support.

Current education reform in the United States is characterized by a flow in the direction of reducing financial support while strengthening the role of the federal government by synthesizing the perspectives of both camps. Also, before 1980, the right to equal education for the low-income class was emphasized, and after that, educational excellence was more emphasized, but resolving the educational gap is an important task for the US education reform regardless of ideology.[12]

The change in the method of electing the superintendent was most affected by the flow of strengthening the role of the Federal Ministry of Education and reducing financial support. In 1910, 72% of the states directly elected the superintendent through an election, but in 2008, it was only 28%. On the other hand, the appointment systems in which the state board of education and the governor directly elect the superintendent have increased significantly. This trend means that the position and authority of the educational superintendent in the United States is greatly weakening.

What is noteworthy in the process of change in educational autonomy in the United States is the change in the method of allocating educational authority. In the United States, since the 「Elementary and Secondary Education Act」 was enacted in 1965, there has been active discussion about the role of the federal government in the education sector. According to the tendency of the ruling party, the minimization and maximization of the role of the federal government in education were insisted. And the will to pursue education reform through the formation of a consensus on education reform and through the efficient distribution of educational authority for the purpose of resolving the educational gap was at the center of this debate.

It can be inferred from the educational reality in the United States such as

This is the American goal of strengthening the educational rights of schools and parents at various levels, such as the introduction and emphasis of the national standardized test system, reinforcement of school responsibilities and obligations through financial support, permission and encouragement of educational options, and invitation of highly qualified principals and teachers.

It can be inferred from the educational reality of strengthened educational rights of each school and parent, such as introducing and emphasizing the national standard test system, strengthening the responsibility and obligation of schools through financial support, allowing and encouraging educational options, and encouraging the invitation of highly qualified principals and teachers.[13]

IV. Conflict and resolution between local education-related entities

1. Recognizing state autonomy and minimizing federal intervention

The federal government is the primary operating entity that restricts the decision-making and

execution of education policy when the state government implements its own education policy, and the U.S. Constitution is characterized by vesting legal powers with respect to education in each state. This is difficult to compare with Korea, where the central government executes education policies and controls the education policies of each local government, because the process and procedures for the implementation of education policies are different. If there is a similarity, it would be a way to induce the federal government to control each state's education problems through a special budget.

One example is the Obama administration's policy to abolish the cap on charter school establishment and to expand teacher evaluation. The policy was linked to the payment of federal aid funds, and immediately after taking office as president, Obama urged each state legislature to abolish the cap on charter school establishments. In addition, the Federal Ministry of Education stated that the state would not be able to benefit from about \$5 billion in federal aid if the state does not remove the legal restrictions that prohibit the expansion of charter schools.[14] As a result, in 'Race to the Top', an education reform plan after the economic crisis of 2008, Arne Duncan, the Minister of Education of the Obama administration, excluded state governments from federal aid funds, which restricted charter school establishment and banned linking teacher and principal evaluations to student test scores. This case showed that conditions were already set to reduce or block the federal government's intervention in education policy depending on the state's position. If the state is willing to give up federal subsidies, there is no need to be aware of the federal government's involvement in education policy.

Currently, the United States recognizes each state's autonomy in education issues, and although the federal government's influence on the state government is gradually increasing compared to the past, the federal government's educational

authority is still limited to guardianship guidance. It is currently limited. It is noteworthy here that the conflicts and disputes between the limited federal government's educational authority and the active state government's educational authority are not very prominent. This is different from our education administration system, in which the central government actively guides and supervises local governments, and has implications for Korea's education administration system, where disputes and conflicts between the national and local education authorities in various fields are continuing.

2. Policy decision-making and implementation through consultation

As mentioned above, in the United States, each state must agree with the state or local education boards in determining and implementing policies on education issues. This 'consensus system' stands for democracy in which residents' opinions are reflected in major policies, and it is an institutional device that can prevent monopolies by specific people or interest groups. In addition, the US education system, which appoints a superintendent or head of education with educational and management expertise to materialize and execute the policies set by each committee, presupposes a consensus resolution, so the problem caused by the biased decision of the autonomous system can be solved in advance and it can be seen as a reasonable way to block and reduce the political burden.

In other words, the U.S. education policy making and execution process, in which residents can directly participate as members of state or local boards of education, without entrusting a small number of experts to decide on issues of sharply intertwined political interests, can be presumed that it played a role in preventing conflicts and disputes that may arise due to differences of opinion or differences in the interpretation of laws and regulations between subjects.

Such a consensus system in the United States suggests a supplementary point to the local education administration system in Korea, where conflicts between various educational entities are occurring because of the current excessive dependence on one superintendent of education.

Since the 1980s, as controversy has arisen over the deterioration of public education in American society, state governments have begun to revise laws in a way that allows state governments to actively intervene in state education departments and education-related institutions. The student's poor academic performance was the basis for the state's direct involvement in the local school district and the somewhat compulsory delegation of educational administration. The provincial governments in the districts, where the academic stagnation is persistent and long-term, criticized the provincial board of education and officials of provincial education office for not having the ability to solve the problem, and tried to solve the problem through direct intervention. State governments such as Boston, Chicago, Cleveland, Washington, DC, and Detroit delegated all educational administrative powers to the heads of administrative agencies, making them responsible for school reform.

However, this plenipotentiary delegation did not bring only positive results. In New York State's Yankers School District, the school district and state school district stakeholders opposed direct state intervention, hindering the state's efforts to reform education. As a result, in the Yankers School District, racial inclusion education, which the New York State government had been focusing on, was defeated.[15] In addition, the debate over state government intervention in education administration continued to arise.

In the case of public schools, where educational administrative authority to exercise, full power is directly delegated to the state government and a significant number of students are black and Hispanic, they have been criticized for reducing the

authority of the members of the Education Committee of minority backgrounds, making it possible to handle educational administrative tasks for minorities. In other words, office work and delegation of authority for education administration is being used as a means of racial discrimination.

V. Conclusion

In the case of conflicts of authority between the federal government, state governments, and state offices of education in the US educational autonomy, the federal government's authority and role in education is very weak. Therefore, unlike the conflict between the central government and local educational institutions in Korea, in the case of the United States, conflicts between the state government and the state education offices arise.

It is not realistically feasible to directly apply these conflicting cases of the United States to Korea. As mentioned earlier, unlike us, the United States places more importance on the authority of the state government than that of the federal government and adopts a different method from ours in the composition of state school districts, state education offices, and state education committees. The fact that there are constant debates about the intervention of the federal or the state government in educational autonomy in the United States, and that the results are different for each state are also factors that make it difficult to apply in a comprehensive field. However, the analysis of conflict cases and issues between the state government, local school districts, and state offices of education, and the results can be limitedly applicable to the preparation of ways to resolve conflicts between local governments and local educational autonomous institutions that are currently occurring in Korea.

In addition, it is difficult to fundamentally compare conflicts and resolution cases of the United States, where the education authority of the

state is recognized as much as possible, and federal government has a minimal intervention in education, to those of Korea, where there are a few cases where conflicts between the Minister of Education, who has the national education authority, and the superintendents of metropolitan/provincial education, who have local education authority, lead to legal disputes, but we need to take efforts to find a way from the United State's cases to resolve conflicts from educational administrative decision-making and execution.

Through these efforts and research, it is hoped that a mechanism for preventing conflict will be established, which solves our education problem where the process until unnecessary conflicts and disputes are resolved according to the court's decision is too long and which minimizes the damage caused by the delay in the implementation of education policies due to the conflict of authority.

REFERENCES

- [1] Michael D. Waters, Alabama's framework for public education-A survey of the education provisions in Alabama's Constitution of 1901", *Cumberland Law Review* p.400-403, 2002-2003,
- [2] Kiwoo Lee, "Relationship between general local administration and local education administration," *Local Administration Research* Vol. 25, No. 3, Korea Institute of Local Administration, p.49. 2011,
- [3] New York State School Boards Association. *New York Education Laws*. Charlottesville, VA: LexisNexis. 2004.
- [4] Si-yeol, Pyo, "Main Contents and Issues of the 2007 Public Education Reform Amendment Act in Washington DC: Focusing on Changes in Education Governance," *Education Law Research* Vol. 21 No. 2, p.354, 2009,
- [5] Sung-Won Hong, "A Study on the Development Plan of Local Educational Autonomy System - Focusing on Awareness Survey on the Issues of Educational Autonomy," *Pai Chai University Ph.D. thesis*, p.39, 2010.
- [6] F. Lunenburg, A. Ornstein, *Educational Administration*, Belmont, CA : The Thomson Cor, 2008.
- [7] Jae-Hyun Cho, "A Study on the Ideological Foundations of Educational Autonomy and the Organizational Principles of Autonomous Educational Institutions," *Journal of Public Law*, Vol. 14, No. 1, p.105, 2013.

- [8] Miseon Kim. "A Study on the Development Plan of the Korean Educational Autonomy System". Sejong University doctoral thesis. p.41, 2011.
- [9] J. D. Folt, History of the University of the State of New York and the State Education Department: 1784~1996, Albany, NY: The University of State of New York and the Board of Regents, 1996.
- [10] Joo-Yeol Ahn, "A Study on the Legal Status of the educational superintendent-Focusing on the Relationship with the Minister of Education," National Law Research, Vol. 11, No. 1, p. 6. 2015.
- [11] Sung-Won Hong, "Educational Autonomy of Local Governments and State Administrative Supervision", Goshi, Vol. 40 No. 9, Gosi History, p.39-40, 1995.
- [12] Young-chul, Choi, "A Study on Overseas Local Educational Administration System," Ministry of Education, Science and Technology, Korea Regional Education Research Center, p.49, 2009.
- [13] Young-Soo, Jung et al., "Relevant Laws and Regulations Reform for Substantializing of Local Education," Chungbuk National University Regional Education Research Center, p.23-26, 2008.
- [14] Ravitch, D. The death and life of the great American school system: how testing and choice are undermining education. New York: Basic Books. p.223
- [15] Yong-il, Kim et al., "A Study on Conflict Resolution Methods Between Central and Local Educational Administrative Authorities", Gwangju Metropolitan Office of Education, p.154, 2012.

Authors



Jong-Ryeol Park received the Ph.D. degree in Laws and Civil Law from Chosun University, Korea, in 2001, 2006 respectively. Dr. Park joined National Communication Ombudsman District

Prosecutors' Office in Gwangju in 2009 and was a member of Metropolitan Police Agency Administrative Disposition of a Driver's Licence Review Committee in Gwangju in 2010. Also he was Policy Advisers in Gwangju, Jeonnam Regional Military Manpower Administration. He is currently a professor in the Dept. of Police & Law at Kwangju Women's University. He is interested in Civil Special Act and Registration of Real Estate Act.



Sang-Ouk Noe received the Ph.D. degree in Laws Studies from Dongguk University, Korea. Voluntarily resigned from human resources department of Posco in 2008 and worked as professor for industry-academy

cooperation in Gangneung Wonju National University and Cheonnam National University, trying to promote employment and field practices. Since 2015, I have been working as an assistant professor in Police Law Department of Joongbu University. Furthermore, I was designated as a professional member of Korea Industry Commercialization Association in 2014.