CHAPTER XV

SCHOOL HYGIENE

SCHOOL health activities have been acknowledged for many years as a legitimate part of the educational system in this country. Reasonable efforts by public health and public school authorities to prevent communicable diseases among school children and to promote the general health of pupils by means of physical education, health teaching, proper nutrition, and other scientific procedures are recognized as forming a proper and valid exercise of the police power of the State in the interests of the public health and general welfare.

To obtain an education is both a constitutional privilege and a legal duty. State constitutions provide for the establishment and maintenance of free common schools for all children, and state laws generally require that schooling shall be compulsory for all children up to a certain age, usually about sixteen years. Age must be shown by official birth certificates.

The Federal Government has no jurisdiction over schools, except government institutions such as the schools for noncitizen Indians and Eskimos, the United States Military and Naval Academies, and the public schools of the Territories and the District of Columbia. Under the terms of the Smith-Hughes Act of 1917 (20 U.S.C. 11-28) and subsequent acts, the Federal Government does, however, make grants to the States for vocational education and rehabilitation, allotting more than $7,000,000 annually for this purpose. These laws are administered by the vocational division of the United States Office of Education of the Federal Security Agency, which cooperates with state boards of vocational education. There is also an Office of Vocational Rehabilitation in the Federal Security Agency.

Administration of public schools is generally delegated by state legislatures to local school districts under the direction of boards of education as duly constituted by law.[1] The local school authorities are also subject to supervision by state departments of education or public instruction.

As in the case of local boards of health, boards of education may be authorized to adopt rules and regulations[2] to carry out the purposes

1. N. Edwards, *The Courts and the Public Schools,* Chicago, University of Chicago Press, 1933.

2. *Allentown* v. *Wagner* (1906), 214 Pa. St. 210, 63 A. 697. *Nether Providence School Dist.* v. *Montgomery* (1916), 227 Pa. St. 370, 76 A. 75.

of educational legislation. These rules and regulations have the force and effect of law and may include health regulations.

School Health Activities

In addition to the powers of boards of education which are derived, under the state constitutions, from legislation and charters, school authorities as political agents of the State may also exercise the police power of the State for the protection of the health of teachers, pupils, and all other persons coming within their jurisdiction.

This power may, however, be limited by legislative enactment. An example of such a limitation would be a law passed by a state legislature prohibiting the exclusion from school of any pupil for failure to be vaccinated. In the presence of an emergency due to the existence of an epidemic of smallpox, the exclusion of unvaccinated children from school as a necessary public measure would, nevertheless, be upheld regardless of such legislation.[3]

The school health activities now advocated by leading authorities in this field are concerned with both health protection and positive health promotion. They include such essential and desirable procedures as: 1) sanitation of the schoolhouse and its environment, including proper ventilation, lighting, seating, and adequate toilet, washing, and other sanitary facilities; 2) medical, nursing, dental, and psychological services for pupils, including periodic physical examinations, routine inspections to detect communicable diseases and physical defects, voluntary (or mandatory) immunization against diseases (smallpox, diphtheria, etc.), and quarantine or isolation where necessary; 3) health education of pupils; and, 4) physical education or training of pupils. Among other health activities recommended are nutritional services, mental hygiene, and special classes for the physically handicapped.[4]

School health services of this general nature have received legislative sanction since 1880, when every State adopted a law requiring the teaching of the physiological effects of alcohol and narcotics along with general hygiene.[5] After 1892, when Ohio made physical training a part of the school curriculum, laws were generally adopted requiring

3. Such laws have been adopted in a few States. See Chapter XIV, on Vaccination.

4. *Suggested School Health Policies,* American Medical Association, revised, 1945.

5. J. F. Rogers, *State-wide Trends in School Hygiene and Physical Education,* Pamphlet No. 5, U.S. Office of Education, (revised) 1941.

calisthenics, gymnastics, or physical education in the public schools. Medical inspection was first provided by law in Connecticut in 1899, although this statute called merely for eye examinations. After 1906, when Massachusetts adopted a law making general medical inspection of school children mandatory in all cities and towns, most of the States passed similar legislation or enacted permissive legislation on this subject.

Administration

Legal provisions with regard to the administration of school health activities vary in the different States. Sometimes the administration of this work is vested by law solely in the school authorities, and sometimes it is given over entirely to the public health authorities. Occasionally, the laws provide for a division of authority between these two executive branches of the government, as where health departments are responsible for medical inspection of pupils and boards of education are responsible for physical training and health education of pupils.

There is some conflict of scientific opinion as to whether school health work should be controlled by educational authorities or public health officials, leaders in each field claiming the prerogative for their own profession.[6] The Committee on Administrative Practice of the American Public Health Association suggests a special division in health departments of cities of 100,000 population for the health supervision of school children, but makes the following recommendations:

> The administration of this program may be vested wholly in the department of education, with its own separate staff of physicians, dentists, and nurses as well as health and physical education teachers. There are some advantages in this unity of service with a closer tie between the different branches; in the smaller cities particularly the department of education with its larger budget is often better organized to absorb this work than is the department of health. The argument is especially strong if the physical examination is regarded as an educational procedure. However, if the school department carries the complete responsibility it is important that the school health program be closely integrated with other health programs of the community, for no school health program can stand alone.
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> On the other hand, there are distinct advantages in separating the program into two parts. Classroom instruction and physical education may remain with the department of education, while the health service functions are carried out by the department of health. Under this ar-

6. W. G. Smillie, *Public Health Administration in the United States,* 2d ed., New York, Macmillan, 1940. White House Conference on Child Health and Protection: 1930, *The School Health Program,* New York, Century, 1932.

rangement the school health service becomes an integral part of the community health program with medical, dental, and generalized nursing service focused on health in its broader family aspects. This obviates the creation of two distinct medical, dental, and nursing administrations with the possibility of confusion in the approach to families. Also, if the service is under the health department it can be extended to parochial schools whereas otherwise separate services are usually necessary, one for the public schools under the department of education and one for the parochial schools under the health department. Furthermore, in counties with full-time health units, it is more practical to have the school health service administered by the department of health.

However school health services may be primarily administered, a joint conference committee on school health, with representation from both the department of education and the department of health (and including if possible the fields of sanitation, mental hygiene, health service, health instruction, and physical education), will prove helpful. Sometimes the chief school physician is appointed a deputy health officer.[7]

Where administration of school health activities is imposed by statute on local boards of education, the general public health laws and regulations of the community apply to the conduct of schools. If an actual or apparent conflict occurs, the public health laws must prevail, for health is more important to the general welfare than is education, although both are important.

In times of emergency, such as the occurrence of epidemics, all or some of the schools may be closed for the protection of the public health on order of the public health authorities,[8] unless the statutes have limited this power of health officials over schools.[9]

It is within the constitutional power of a State to provide by law for regulation of the manner of erection of school buildings in the interests of the public health,[10] and the legislature may also require that a site selected for a schoolhouse must be approved by both the county health officer and the county superintendent of schools.[11] When school buildings become a menace to health, they may be condemned

7. I. V. Hiscock, editor, *Community Health Organization*, 3d ed., New York, Commonwealth Fund, 1939.

8. *Globe School District* v. *Globe Board of Health* (1919), 20 Ariz. 208, 179 P. 55.

9. *Crane* v. *School District* (1920), 95 Ore. 644, 188 P. 712. See 140 *American Law Reports* 1048.

10. *Pasadena School District* v. *City of Pasadena* (1913), 166 Cal. 7, 134 P. 985, 47 L.R.A. (N.S.) 892, Ann. Cas. 1915 B 1039.

11. *State ex rel. Wildin* v. *Eickoff* (1929), 84 Mont. 539, 276 P. 954.

or ordered vacated by public health officials, although such orders may be appealed.[12]

In carrying out his legal duties, a local health officer has the right to enter the schools at any time for the purpose of investigating cases or suspected cases of communicable diseases, nuisances, or any other conditions that are or may be dangerous to the public health. A school board is responsible for public or private nuisances in the same manner that an individual or a municipal corporation is liable for such nuisances.[13]

Organization of School Health Work

Statutes authorizing boards of education to expend monies in the interests of the public schools have been held by the courts to authorize the creation of health departments or health education services in the schools and the employment of medical inspectors, nurses, dietitians, and teachers of health and physical education.[14] Since the school authorities have the right and power to exercise sound discretion and judgment in performing and carrying out the duties and powers delegated to them by law, the maintenance of a system of medical inspection and health service is a valid and reasonable exercise of that discretion. The mere fact that primary responsibility for public health activities in a community is delegated to the board of health does not preclude a board of education from undertaking school health work unless such duties are forbidden by the statutes.

There is, however, a limit beyond which the school authorities cannot go in the maintenance of school health services. According to a decision of the Washington Supreme Court, a school board may conduct proper health activities, but under the law it cannot maintain clinics and purchase equipment in excess of that necessary for legitimate preventive medical and dental services and health education.[15] The function of school health work is to detect communicable diseases and physical defects so as to safeguard the health of all pupils, but it

12. *State Board of Health* v. *Ort* (1926), 84 Ind. App. 260, 151 N.E. 31.

13. See Chapter XIII, on Nuisances and Sanitation.

14. *State* v. *Brown* (1910), 112 Minn. 370, 128 N.W. 294. *Hallett* v. *Post Printing and Publishing Co.* (1920), 68 Colo. 573, 192 P. 658, 12 A.L.R. 919. *Mosely* v. *City of Dallas* (1929), 118 Tex. 461, 17 S.W. (2d) 36. *Board of Education of Bowling Green* v. *Simmons* (1932), 245 Ky. 493, 53 S.W. (2d) 940.

15. *McGilvra* v. *Seattle School District No. 1* (1921), 113 Wash. 619, 194 P. 817, 12 A.L.R. 913. *Prevey* v. *School District* (1933), 263 Mich. 622, 249 N.W. 15. *Board of Education of Cleveland* v. *School Dist.* (1941), 68 Oh. App. 514, 39 N.E. (2d) 196.

is not the function of the school to offer or give medical or dental treatment. Children needing medical, dental, or hospital care must be referred to private physicians and dentists or to appropriate public welfare officials, except, of course, in cases of emergency where temporary first aid measures may be necessary.

A physician engaged or appointed as a school medical inspector by a board of education or by a board of health is an employee and not a public officer. If, therefore, a medical inspector has a contract of employment for a stated period, he can recover the salary or compensation contracted for if he is dismissed without notice or cause before his contract expires.[16]

It is contrary to public policy for a board of education to appoint one of its own members as medical inspector of the schools over which he has jurisdiction as a board member.[17] The principle is the same as that which debars a board of health from appointing one of its own members as a quarantine physician,[18] and is predicated upon the established rule that no member of a municipal government may be interested directly or indirectly in a contract made by the municipality.

An osteopathic physician is not eligible to appointment as a medical inspector of schools, according to a New Jersey decision in which it was pointed out that a state law requiring boards of education to employ competent physicians as medical inspectors clearly was intended to mean licensed physicians having the degree of M.D.[19] The school law in question was adopted prior to the passage by the legislature of an osteopathy act, and its context was said by the court to indicate that the intention of the legislature was that only medical practitioners should be appointed to this position.

On the other hand, licensed osteopaths have been held by the District Court of Appeals in California to be entitled to be granted health and development certificates, which qualify the holders to perform certain health services in the schools.[20]

16. *Kosek* v. *Wilkes-Barre Tp. School District* (1933), 110 Pa. Super. 295, 168 A. 518, affirm. (1934) in 314 Pa. 18, 170 A. 279. See *Skladzien* v. *Bd. of Ed. of City of Bayonne* (1934), 115 N.J.L. 203, 178 A. 793.

17. *Barrett* v. *City of Medford* (1926), 254 Mass. 384, 150 N.E. 159.

18. *Gaw* v. *Ashley* (1907), 195 Mass. 173, 80 N.E. 790, 122 A.S.R. 229. See pages 92, 113.

19. *Chastney* v. *State Board of Education* (1929), 7 N.J. Misc. 385, 145 A. 730. See page 105.

20. *Jordt* v. *California State Board of Education* (1939), 35 Cal. App. 591, 96 P. (2d) 809.

Physical Examinations of Pupils

State legislatures may require or authorize boards of education to require physical examinations of all pupils by competent persons, at such times and in such places as are deemed necessary. Thus, physical examinations may be made prior to admission to school, at the beginning of the school year, before permitting the participation of pupils in athletics, and for readmission of pupils to school after absence because of communicable disease. In some instances, state laws of this nature provide that pupils whose parents object may be exempt from certain of these physical examinations.

In the absence of statutory authority, however, it has been held that a board of education may properly adopt a resolution requiring that at the beginning of each school year all children must obtain and furnish a certificate from a licensed physician reporting on their physical condition.[21] In this case, the required physical record could be secured either from a private physician at the parent's expense or without charge from the school physician. The announced purpose of the record was to protect the community and the pupils against the spread of contagious and infectious diseases.

In sustaining such an order of the board of education in a case brought by a parent who felt that the examination might cause some mental suggestion of disease which would be harmful, the Supreme Court of South Dakota stated that:

> Under the regulation complained of, no person is excluded from school, except upon his own volition. Respondents [the board of education] merely seek to learn those things, concerning the mental and physical condition of the pupil, which they think useful and needful in the proper discharge of the functions of the school, and especially in the proper handling of the individual pupil. The report asked for would lead to the exclusion of the pupil only when it showed that the child was not of school age, that it was not a resident of the district, or, if the respondents so ordered, when it showed that the child was then suffering from some disease rendering it a menace to its associates.[22]

Exclusion of Children from School

School authorities, either acting on their own volition or on order of the public health authorities, may exclude from school any child who is suffering from a communicable disease, a suspected disease, or

21. *Streich* v. *Board of Education* (1914), 34 S.D. 169, 147 N.W. 779, L.R.A. 1915 A 632, Ann. Cas. 1917 A 760.

22. *Streich* v. *Board of Education, op. cit.*

any other mental or physical condition that causes the child to be dangerous or offensive to others.[23]

Where two children from one family were excluded from school on order of a county board of health because they were afflicted with trachoma, a dangerous communicable disease of the eyes, a writ of mandamus to compel their admission to school was refused even though evidence was presented to show that the children did not have trachoma.[24] The exclusion of children from school for venereal disease,[25] and also for pediculosis or head lice,[26] has likewise been upheld.

Where a child was excluded from school because of a sore throat and was refused readmission until she had furnished a negative report from a throat culture submitted to the division of public health of the city, and in addition was required to present a certificate from a physician as to the condition of her throat or submit to an examination by the school physician, this procedure was upheld by the Supreme Court of Minnesota as not unfair, arbitrary, or unreasonable.[27]

In this case the refusal of the child to comply with the rules of the board of education was stated by the court in its decision to be based upon conscientious objections incident to being a Christian Scientist. The court held, however, that the board had the power to make the rule, and that even though matters of health were delegated by the city charter to the board of public welfare, this power was not denied to the board of education. In the course of its opinion, the court pointed out that:

> This controversy arises from a sore throat. The teacher could not be expected to determine if it was ordinary or streptococcic or the early stage of some other contagious or infectious children's disease. We must recognize that one child may quickly spread a disease among the many children it comes in contact with in school. It seems more reasonable to us to have the rules applicable in preventing as well as in controlling an epidemic. The court should not attempt to substitute its judgment as to what the rules should be, when operative, or the period of operation. In fact, these rules do not really exclude any one except by his own volition. The record in this case merely placed before plaintiff a condition to his child's admission to school. The condition required is a certificate of a physician, and in case of sore throat

23. *Hallett* v. *Post Printing and Publishing Co.* (1920), 68 Colo. 573, 192 P. 658, 12 A.L.R. 919.

24. *Martin* v. *Craig* (1919), 42 N.D. 213, 173 N.W. 787.

25. *Kenney* v. *Gurley* (1923), 208 Ala. 623, 95 So. 34, 26 A.L.R. 813.

26. *Carr* v. *Inhabitants of Town of Dighton* (1917), 229 Mass. 304, 118 N.E. 525.

27. *Stone* v. *Probst* (1925), 165 Minn. 361, 206 N.W. 642.

or suspected diphtheria, a negative report from a culture submitted to the division of public health. The school furnishes facilities for acquiring the necessary information if the child will submit to medical examination by the school authorities. Many of us have to subordinate our own ideas or views to governmental authority, and the requirement calls for cooperation without requiring any one to surrender his own views or conscientious objection thereto. The child is required to remain away if he will not submit to the rule. The board asks only for such information as it deems necessary in the proper administration of the schools. This information would result in exclusion only in the event that the child himself was a menace to his associates. The board provides a way for the child to qualify for admission without any cost or expense. The matter is entirely in his own hands.

Exclusion of children from school for failure to be vaccinated is discussed at length in Chapter XIV, on Vaccination.

Teachers

Since the health of teachers is significant not only to themselves but also to their pupils, state legislatures may prohibit the employment of teachers suffering from maladies such as tuberculosis or any other communicable disease, and to this end may require or authorize school boards to require that every teacher shall furnish a health certificate from a licensed physician showing that the teacher is free from contagious and infectious disease during the term of employment.[28] A teacher may also be denied employment or a license to teach because of some mental or physical defect, but such action by a board of education may be appealed to the courts. If a teacher becomes diseased during her period of employment so that she endangers the health of the pupils, she may be dismissed, or suspended.

A regulation of the board of health of New York City providing that all educational authorities should require biennially of all teachers and other employees who work in schools and come in contact with the children, a certificate from a physician showing them to be free from active tuberculosis was upheld by the New York Supreme Court in 1945.[29] The court held that the board of health had the power to adopt the regulation, that it was necessary for the protection of the public health of the people of the city, that there was no prohibition against such reasonable classification, and that there was no invasion of the constitutional rights and privileges of the teacher or employee, which must yield to the common good.

28. *Tate* v. *School District* (1929), 324 Mo. 477, 23 S.W. (2d) 1013. *Coleman* v. *District of Columbia* (1922), 279 F. 990, 51 App. D.C. 352.

29. *Conlon* v. *Marshall* (1945), 59 N.Y.S. (2d) 52, 185 Misc. 638.

The establishment of a system of health service for city employees and teachers has likewise been upheld in a recent California decision.[30]

During school hours, the teacher, subject to the supervision of the principal and the school board, stands in the place of the parent and has complete control of the health, morals, discipline, and surroundings of the child. Thus, it has been held that a school may forbid pupils to leave the school grounds during luncheon periods except in cases of children who go home to lunch, the object of the regulation being to require patronage of the school cafeteria rather than nearby public eating places maintained as private enterprises.[31]

When a school is closed on order of the public health authorities because of the existence of an epidemic, a teacher is entitled to her customary compensation,[32] unless there is statutory authority to the contrary[33] or a special proviso in the contract of employment.[34] In the same situation a person who has an arrangement or contract to transport pupils to school can recover in some jurisdictions[35] but not in others.[36] An epidemic is not, as a rule, a circumstance that voids a contract, although the exact wording of the agreement between the parties would, of course, govern any particular situation.

School Lunches

The National School Lunch Act, passed by Congress and approved on June 4, 1946, provides for federal grants-in-aid to the States for nonprofit school lunch programs. Unlike similar legislation which had been in effect during World War II, this act requires the States to

30. *Butterworth* v. *Boyd* (1938), 12 Cal. (2d) 140, 82 P. (2d) 434, 126 A.L.R. 838.

31. *Richardson* v. *Braham* (1933), 125 Neb. 142, 249 N.W. 557.

32. *Dewey* v. *Union School District* (1880), 43 Mich. 480, 5 N.W. 646, 38 Am. R. 206. *Carthage* v. *Gray* (1894), 10 Ind. App. 428, 37 N.E. 1059. *Randolph* v. *Sanders* (1899), 22 Tex. Civ. App. 331, 54 S.W. 621. *McKay* v. *Barnett* (1900), 21 Utah 239, 60 P. 1100, 50 L.R.A. 371. *Libby* v. *Douglas* (1900), 175 Mass. 128, 55 N.E. 808. *Smith* v. *School District* (1913), 89 Kan. 225, 131 P. 557, Ann. Cas. 1914 D 139. *Board of Education* v. *Couch* (1917), 63 Okla. 65, 162 P. 485, 6 A.L.R. 740. *School District* v. *Gardner* (1920), 142 Ark. 557, 219 S.W. 11. *Phelps* v. *School District* (1922), 302 Ill. 193, 134 N.E. 312, 21 A.L.R. 737.

33. *School District* v. *Howard* (1904), 5 Neb. 340, 98 N.W. 666.

34. *Gregg School Tp.* v. *Hinshaw* (1921), 76 Ind. App. 503, 132 N.E. 586.

35. *Crane* v. *School District* (1920), 95 Ore. 644, 188 P. 712. *Montgomery* v. *Board of Education* (1921), 102 Oh. St. 189, 131 N.E. 497, 15 A.L.R. 715.

36. *Sandry* v. *Brooklyn School District* (1921), 47 N.D. 444, 182 N.W. 689, 15 A.L.R. 719.

match the federal funds allotted for the purchase of agricultural commodities for this purpose, but the sum of $10,000,000 is apportioned directly to the States for nonfood assistance, including equipment used on school premises in storing, preparing, or serving food for school children. The law requires that the lunches served shall meet minimum nutritional requirements prescribed by the Secretary of Agriculture, who enforces the act. It applies not only to public schools but also to nonprofit private schools.

Private Schools

Private and parochial schools are not under the jurisdiction of local public school authorities, but they are subject to all public health laws, ordinances, and regulations. The health services and activities in such schools may be inspected and supervised by municipal (or county) health departments, which likewise have complete authority to enforce all necessary health and quarantine measures in private schools and other institutions. Statutes sometimes provide that local health departments shall furnish medical inspection for parochial and other private schools, although any form of state or municipal aid to sectarian schools is forbidden by the constitutions of some of the States.