

State-Level Education Governance

**Management Audit Committee
December 2005**

Management Audit Committee

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EXECUTIVE SUMMARY

State-Level Education Governance

Program Evaluation Division

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Purpose

Three entities constitute the state level of Wyoming's educational system: the Superintendent of Public Instruction, the Department of Education supervised by the Superintendent, and the State Board of Education. Statutes create a complex and interdependent structure that assumes a cooperative relationship will exist between these entities. However, at times there has been tension between the Superintendent and the State Board, as their responsibilities intertwine. This report reviews this relationship and describes the evolution of many responsibilities delegated to each, as well as the potential barriers to cooperation.

Background

In 1889, the Wyoming Constitution established that supervision of public education would be entrusted to the Superintendent in the manner determined by the Legislature. As one of Wyoming's five elected officials, the Superintendent serves on multiple education-related boards and on four major state boards, and is accountable to the public for education matters. The Superintendent's education-related duties have changed over the years but remain primarily administrative, those of the Department's chief executive officer.

The State Board, created by the Legislature in 1917, consists of 11 members appointed by the Governor for staggered, six-year terms.

The Board has long had the duties of prescribing standards for education programs and evaluating and accrediting schools. These responsibilities, along with that of assessing student performance, became critical in state school reform of the late '90s.

In the past two decades, the Legislature has made numerous statutory changes to address issues of authority believed to be creating tension in the Superintendent/State Board relationship, and to add to the duties of each. Further, since 1997, the Legislature itself has become more involved in guiding education through reform efforts. Finally, federally mandated "No Child Left Behind" requirements have created specific demands affecting this relationship by linking academic standards and student assessments more closely to federal funding issues.

Principal Findings

One perspective is that tension results because the Superintendent, as the primary public face of education in the state, has accountability but not authority for critical education decisions made by the Board. Candidates for Superintendent campaign on specific education issues with the belief that as an elected official and the chief education officer, the Superintendent should have a leadership role in all areas of education, even those that have been legislatively delegated to the State Board.

Another source of contention is that the State Board must rely on the Department to provide almost all the information and research it needs to conduct business. Each new Superintendent can reconfigure the Department's organization and allow the Board a different degree of access to the Department's staff and resources.

Superintendents may also disagree with Boards as to their roles and scope of authority. The Superintendent and the Department need the Board to perform specific statutorily- designated duties, while some Boards see a broader role for themselves in becoming more proactive and bringing about "big picture" discussions to enhance education. Because pursuing such a role requires Department support, it can strain Department resources already pledged to support other responsibilities, some assigned by the Legislature. Complicating matters further, the Legislature's education reform measures from 1997 on have given many new responsibilities to this lay board that has no staff.

Most states use one of four basic models of education governance. Wyoming and ten other states use the same basic structure: an elected Superintendent and a Board appointed by the Governor. Significant variation occurs from state to state and no one model or organizational variation is ideal or more functional than the others. While other states may at present have a cooperative relationship, the balance can be tenuous.

Options to Reduce Tension

Our research suggests that radical changes to the structure are not necessary. Instead, the following are several options available to address the sources of tension:

- ❖ Make the orientation currently provided only to State Board members also available to candidates for

Superintendent. Expand the orientation by incorporating the Attorney General's Office to review statutes, roles, and responsibilities.

- ❖ Enhance State Board resources by providing a staff analyst to do some research and information gathering.
- ❖ Empower the Superintendent with a vote on the State Board to help balance accountability with authority.
- ❖ Make the State Board an advisory body, thus eliminating questions of authority and allowing the State Board to focus on discussion of improving education.
- ❖ Maintain the status quo if the Legislature is comfortable with the creative tension that occasionally occurs.

Agency Comments

The Superintendent generally agrees or partially agrees with the report's findings and desires that the current structure be retained. The Superintendent is committed to cooperating and communicating with the State Board and will institute various changes within the Department to assist the Board.

The State Board also favors maintaining the current system, believing minor adjustments will help it be more effective. The Board disagrees, however, with the options of giving the Superintendent a vote on the Board; of making the Board advisory; and of having the Legislature focus the Board on only its decision-making responsibilities.

Copies of the full report are available from the Wyoming Legislative Service Office. If you would like to receive the full report, please fill out the enclosed response card or phone 307-777-7881. The report is also available on the Wyoming Legislature's website a legisweb.state.wy.us

Option Locator

Page Number	Option Summary	Party Addressed (indirectly)	Agency Response	
			Superintendent	State Board
35	Independent orientations in which the Office of the Attorney General participates to explain the statutory roles of the Superintendent and the State Board could better communicate the roles of the two. It would be helpful to orient candidates for the Superintendent office. Department personnel would also benefit from an independently-presented orientation.	Superintendent State Board <i>Political Parties</i>	Agree	Agree
36	To be able to secure more information and research, the Board could have a dedicated policy analyst. However, the Department would still serve as the Board's primary source of expertise in educational issues.	Superintendent State Board <i>Legislature</i>	Partially Agree	Agree
38	The Board might also benefit from more travel funds so that members would maintain greater contact with education system constituents and thus better represent their concerns in state-level governance.	Superintendent State Board <i>Legislature</i>	Agree	Agree
39	A Superintendent vote on the State Board could help to balance authority with accountability.	Legislature	Agree	Disagree
39	The Legislature could make the State Board an advisory body.	Legislature	Partially Agree	Disagree
40	The Legislature could focus the State Board upon its decision-making responsibilities.	Legislature	Partially Agree	Disagree
41	The Legislature could maintain the current arrangement.	Legislature	Agree	Agree

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INTRODUCTION

Scope and Acknowledgements

Scope

W.S. 28-8-107(b) authorizes the Legislative Service Office to conduct program evaluations, performance audits, and analyses of policy alternatives. Generally, the purpose of such research is to provide a base of knowledge from which policymakers can make informed decisions.

In June 2005, the Management Audit Committee directed staff to review K-12 education governance at the state level, with a focus on the working relationship between the State Superintendent of Public Instruction and the State Board of Education. We addressed the following questions:

- What is the history of the Superintendent position and the Board, how were they originally intended to share authority at the state level, and how has that relationship evolved?
- Do barriers to cooperation exist between the Superintendent and the Board?
- How do other states with similar governance structures reconcile superintendent/board differences?
- What options does the Legislature have in adjusting state-level education governance responsibilities?

Acknowledgements

The Legislative Service Office expresses appreciation to those who assisted in this research, especially the State Superintendent of Public Instruction, members of the State Board of Education, and staff of the Department of Education. We also thank the many other individuals who contributed their expertise including former superintendents, former state board members, and other agency officials.

CHAPTER 1

Background

Three state-level entities guide education: State Board, Department, and Superintendent.

Three entities form the triad responsible for the state level of Wyoming’s educational system: the Superintendent of Public Instruction, the Department of Education, and the State Board of Education. As the chief state school officer, the Superintendent provides for the general supervision of public schools; as an elected official, the Superintendent has the status and political power to be the state’s primary spokesperson for public education. The Department is the system’s operational vehicle and the Superintendent’s support staff. The Board’s activities, although often less visible than those of the Superintendent, are of fundamental importance: statutes charge the Board with establishing policies for public education and implementing and enforcing uniform standards for educational programs through school accreditation.

Historically, the Legislature has struggled to create a straightforward organizational structure and a workable balance of duties between the Board and Superintendent. Just in the past 20 years, it has passed two major pieces of legislation to clarify duties and has made numerous additions to the responsibilities of both (see Chart of Statutory Duties 1969 - Present, pp. 10-13).

State’s Constitution established the office of Superintendent, while the Board was a later legislative creation

By Constitution, the Legislature sets the Superintendent’s duties.

The Wyoming Constitution, ratified in 1889, entrusts general supervision of the public schools to the State Superintendent of Public Instruction. The Constitution holds that other powers and duties of the office of Superintendent “shall be as prescribed by law,” thus allowing the Legislature to decide at a more detailed level how to assign specific educational responsibilities.

The Superintendent is one of five constitutionally-designated statewide elected offices, along with the Governor, Secretary of State, Auditor, and Treasurer. As the chief executive officer of the Department of Education, the Superintendent's duties are further prescribed in the Education Code, Title 21 of Wyoming Statutes. Those duties are primarily administrative functions, such as maintaining a uniform statewide reporting system for student assessment, printing forms, and promulgating rules for the acceptance of federal funds, but the Superintendent also has the key responsibility of administering the school finance system.

The State Board was created 30 years after the office of Superintendent.

A State Board of Education was not part of the initial state-level administrative structure for public schools, and was created by the Legislature nearly thirty years after the Constitution's ratification. The Board's members are appointed by the Governor with the Senate's consent. In addition to the duties mentioned above, the Board also sets high school graduation standards and implements a statewide assessment system.

Together, the Superintendent and the Board have authority to take appropriate administrative action, including changing accreditation status, against any school district or state institution that does not comply with applicable laws or with student content and performance standards prescribed by the Board.

The Legislature established a system based on shared and separate authority

Superintendent and Board purposes are closely intertwined.

Since its creation in 1917, the Board's authority has included prescribing statewide policies for education; at the same time, the Constitution entrusts the Superintendent with "the general supervision of the public schools." Because these purposes are so closely intertwined, a cooperative relationship between the Superintendent and the Board has been the custom. The statutory allocation of duties between the two has necessitated that they coordinate their actions and work together to achieve mutually agreed-upon goals. However, the legislative history of the Superintendent's duties, the State Board's functions, and the practical means of sharing these authorities as laid out in statutes, reflects that at times, an unhealthy tension has resulted.

State Board established in 1917. The Legislature's intent in creating a State Board of Education appears to have been to coordinate and readjust the relationship between state and local education communities, reversing the traditional (local) seat of organizational authority. Legislative assignment of certain duties to the new State Board did not, however, fully clarify which entity was to do what, since creation of the Board impinged on what had been for nearly 30 years the Superintendent's exclusive authority.

Soon after the Board's creation, issues about overlapping authority came up.

Questions about proper assignment of duties and the possibility of overlapping authority soon arose. For example, the 1917 legislation stated that "general supervision of public schools shall be entrusted to a State Department of Education at the head of which shall be a State Board of Education which shall administer the state system...." Notably absent from the 1917 legislation was any reference to the Superintendent's position, to which the State's Constitution had already assigned "general supervision of schools." In addition, this framing of the new Board as "head" of the professional Department and as administrator of the state's education system was less than clear.

The Legislature reversed some of its Board-related direction two years later, presumably to clarify the overlap in responsibility it had created. In 1919, it eliminated the Board's "general supervision" authority and its authority over the Department.

The Commissioner of Education was staff to the Board (and Department).

Commissioner of Education. The same legislation that created the State Board in 1917 also authorized the Board to appoint a Commissioner of Education. The Commissioner served several masters: he was staff to and responsible to the Board, but also served as the chief officer of the Department's teacher certification division. In addition, statutes designated the Commissioner as "the executive head of the public school system of the State." Under this somewhat confusing format, and for the next forty years, the Superintendent was head of the Department and supervised the Commissioner. The Board prescribed policies and standards and "recommended" rules and regulations, while the Commissioner, as the Board's executive officer and agent, executed its policies.

Fundamental changes in 1959 and 1969. Amendments to

After elimination of the Commissioner position, the Board no longer had its own staff.

the Education Code in 1959 eliminated the position of Commissioner, transferring the position's powers and duties to the State Board. With this transfer of functional responsibilities came a further depletion of the Board's autonomy, as it no longer had staff of its own through which to carry out these duties. As a result, the Board became more dependent on the Superintendent and the Department staff who report to the Superintendent.

Statutory changes in 1969 made the Board part of the Department.

Ten years after elimination of the Commissioner position, the Education Code of 1969 set up yet another model. This legislation stated that the Department of Education consisted of the State Superintendent, the State Board, and necessary departmental divisions. Under this model, the Board was a part of the Department and had authority to approve the Superintendent's departmental organization and staffing decisions. The Department had the explicit charge of assisting both the Superintendent and the Board with "the proper and efficient discharge of their respective duties."

Further complicating the arrangement was a statutory provision (since repealed) that required the Board "with or without the assistance of the State Superintendent" to enforce its own rules. While the original intent of this provision may have been to restore to the State Board its pre-1959 ability to act on its own, the Board no longer had staff that would enable it to take independent action.

1985 LSO audit found the Board had assumed an ambiguous role

An '85 LSO audit found the Board lacked a separate identity.

By 1984, questions about effective functioning and the appropriate division of responsibilities were being raised and the Legislature scheduled the State Board for a sunset review. A 1985 LSO audit reviewed the powers and duties of the Superintendent and the State Board as well as the functional relationship between them. The report described the State Board at that time as "lacking its own separate identity" and as having taken an "auxiliary position to the Superintendent and the Department." It concluded that the proper role of the Board in the state's educational scheme still needed to be sorted out.

The Legislature has continued to add and shift duties between the two.

The two decades since that analysis have been characterized by continuing legislative efforts to re-frame and streamline the role of the State Board, and to some extent that of the Superintendent, and to clarify their respective duties. During the late 1980s and early 1990s, different pieces of proposed legislation would have provided staff for the Board, made the Board more advisory, allowed the Superintendent to make Board appointments, and would have abolished the State Board altogether, transferring its duties to the Superintendent. While the Legislature did not enact these proposals, it did approve certain others. Chapter 2 examines legislative changes made since 1987 and their implications for the state-level educational governance system.

State Superintendent of Public Instruction

The Superintendent is a partisan office elected every four years. In 2004, the Legislature approved a FY '05/'06 budget for the office of Superintendent of \$1,220,881 in General Funds. The entire Department overseen by the Superintendent had 104 full-time employees and a biennial budget of \$231 million, not including the School Foundation Program, school construction, or court-ordered placement funding. The current Superintendent has reorganized the Department's FY '07/'08 budget request, the structure and amounts of which were not available as of this writing. However, as in the past, the Superintendent's Office budget request will include support staff costs for the State Board.

The Superintendent, a non-voting member of the Board, provides information to it on request.

In addition to serving as the Department's chief executive officer of, the Superintendent is an ex-officio non-voting member of the State Board of Education. As administrator of the policies created by the Board, statute requires the Superintendent to "assist the state board in the performance of its duties and responsibilities, including providing information to the board upon request." The Superintendent also participates in task forces and committees to develop strategies, review programs, and implement plans for improving education in the state.

Superintendent serves on several other boards

The State Superintendent serves with the state's other four statewide elected officials on the State Loan and Investment Board, the Board of Land Commissioners, the State Building Commission, and the Board of Deposits. Further, the State

As one of the state's top five elected officials, the Superintendent sits on four major state boards.

Superintendent serves as an ex-officio non-voting member on the Community College Commission, the State Advisory Council for Innovative Education, and, by Constitution, the University of Wyoming Board of Trustees. In addition, the Superintendent serves on a number of boards created by both statute and executive order, including the School Facilities Commission (W.S. 21-6-202), and other education-related commissions.

Because of legislation passed in 2005 (ch. 242), the Superintendent (or any state elected official) may authorize a designee to act as the official's personal representative to any board or commission, except those to which the official is appointed by the Wyoming Constitution or which is comprised solely of state elected officials (W.S. 9-1-103).

State Board of Education

Of the State Board's 11 members, at least one must be from each of the state's seven appointment districts. One at-large member is a certified classroom teacher; one is a certified school administrator; and two are representative of private business or industry. The other seven members are lay citizens "known for their public spirit, business or professional ability, and interest in education." No more than six members can be from the same political party; members serve six-year terms and are not eligible for reappointment except to fill an unexpired term.

For staffing, the Board has a Department liaison and administrative assistance.

By statute, the Board meets at the call of the Board Chairman, the Superintendent, or the Governor. In 2004, the Board held eight meetings and in 2005 it will hold ten, some of which are teleconference meetings. The Superintendent appoints a high-level Department staff member to act as Board liaison and also provides administrative assistance. However, the Board relies upon the Superintendent and the full Department staff to give members the substantive and analytical information necessary to make informed policy decisions. The Board has no separate staff of its own with which to accomplish duties; its work is carried out "through" and "with" the Superintendent and Department.

Department staff prepare the Board's budget request and submit it to the Legislature as part of the Department's request. Board

The Legislature has approved budget increases to support additional Board activities.

members receive per diem, mileage, and travel expenses but no salary. The Board’s approved budget for the current biennium is \$135,987, a large increase over its FY ’01/’02 budget (see Figure 1.1). The increase is primarily to cover membership in, and out-of-state travel to, the National Association of State Boards of Education (NASBE) as well as additional in-state travel costs and increased communications related to charter school responsibilities.

Figure 1.1

Budget by Biennium

2001-2002	2003-2004	2005-2006
State Superintendent		
\$856,091	\$960,129	\$1,220,881
	<i>'01/'02 – '03/'04 change: +12%</i>	<i>'03/'04 – '05/'06 change: +27%</i>
		<i>'01/'02 – '05/'06 change: +43%</i>
State Board of Education		
\$51,905	\$89,379	\$135,987
	<i>'01/'02 – '03/'04 change: +72%</i>	<i>'03/'04 – '05/'06 change: +52%</i>
		<i>'01/'02 – '05/'06 change: +162%</i>

Source: LSO

Need for further examination of respective roles

Following the election of 2002, friction became evident in the working relationship between the newly-elected Superintendent and the Board. Some held this to be a failing of cooperation between individuals, while others saw it as a governance or structural problem. In 2003 the Board requested clarification from

An informal A.G.

opinion in '03 has not fully satisfied concerns.

the Attorney General of its authority and responsibilities in the performance of its duties as set forth in law. The Attorney General responded with an informal opinion that the State Board establishes education policy, while the Superintendent assists the Board in implementing policy and directs the expenditure of appropriated funds in order to carry out those policies.

While seemingly clear in theory, some tension has continued in practice, with several factors coming into play. For example, the Superintendent is elected in part for political views presented to the electorate, while Board appointees are chosen by a Governor not always from the same political party as the Superintendent. The Board is dependent upon the Superintendent for information and staff support, while the Superintendent depends upon the Board to set standards and policies for statewide public education. Although they are structurally interdependent, both entities are unlikely to have parallel views on every issue at all times.

The next chapters will review statutory duties in Wyoming and governance in other states.

In the nearly 90 years during which the Board has had a role in state-level education governance, the Legislature has shifted and refined the Board's role as well as that of the Superintendent. This study reviews how the statutory allocation of duties sets up tension, describes governance arrangements in similarly structured states, and concludes with options for the Legislature to consider if it wishes to make further system changes.

Chart

Statutory duties 1969 to present

Key:

Statutes enacted or amended:

Statutory duties assigned on or before 1969:

Statutory duties assigned 1985 to 1987:

Statutory duties assigned 1990 to 1994:

Statutory duties assigned in 1997 and after:



Selected Superintendent Duties, 1969 – Present

Not including the Superintendent's board and commission assignments, or school finance duties in Title 21, Chapter 13

Responsibility/Authority	← 1969	1987	1994	1997 →
General supervision of the public schools, with powers and duties prescribed by law. <i>Art. 7, § 14, Wyoming State Constitution; W.S. 21-2-201</i>	Superintendent	Superintendent	Superintendent	Superintendent
Serve as an ex officio member of the University of Wyoming Board of Trustees. <i>Art. 7, § 17, Wyoming State Constitution</i> Serve on the Board of Land Commissioners. <i>Art. 18, § 3, Wyoming State Constitution</i>	Superintendent	Superintendent	Superintendent	Superintendent
Supervise the Department of Education and organize and staff it the way the Superintendent deems necessary to help him discharge his duties. <i>W.S. 21-2-104</i>	Superintendent State Board	Superintendent Amended	Superintendent	Superintendent
Make rules, consistent with the education code, for the proper and effective administration of the state educational system, but not in areas specifically entrusted to the State Board. <i>W.S. 21-2-202(a)(i)</i>	Superintendent	Superintendent	Superintendent	Superintendent
Consult with and advise the state board, local school boards and administrators, teachers and citizens to develop public support for a complete and uniform system of education for the citizens of the state. <i>W.S. 21-2-202(a)(ii)</i>	Superintendent	Superintendent	Superintendent	Superintendent
Enforce the provisions of the education code and the rules and regulations provided for in it. <i>W.S. 21-2-202(a)(iv)</i>	Superintendent	Superintendent	Superintendent	Superintendent
Along with the State Board, report to the governor and recommend legislation and appropriations for education and educational activities. <i>W.S. 21-2-306</i>	Superintendent State Board	Superintendent State Board	Superintendent State Board	Superintendent State Board
Assist the State Board in the performance of its duties and responsibilities, including providing information to the board upon request. <i>W.S. 21-2-202(a)(vii)</i>	Superintendent	Superintendent Amended	Superintendent	Superintendent
Print and distribute school laws, regulations, forms, reports to local district boards, administrators and other persons. <i>W.S. 21-2-202(a)(ix)</i> TRANSFERRED FROM BOARD	State Board	Superintendent Amended	Superintendent	Superintendent
Promulgate rules for the acceptance and disbursement of federal funds apportioned to the state for school lunch, milk, and other commodities distribution programs. <i>W.S. 21-2-202(a)(x)</i> TRANSFERRED FROM BOARD	State Board	Superintendent Amended	Superintendent	Superintendent
Except as otherwise provided by law, decide controversies arising from the administration of the state school system involving rules, orders, or directives promulgated by the State Superintendent, State Board, or the State Department of Education. This decision will be the final administrative determination. REPEALED IN 1994	Superintendent	Superintendent	Repealed	NA
Inform the State Board of applications from school districts to the Farm Loan Board for loans or grants for capital construction. REPEALED IN 1994	NA	Superintendent	Repealed	NA
For purposes of the statewide assessment of students, have authority to assess and collect student educational assessment data from school districts, community colleges, and the University, in accordance with Board rules. <i>W.S. 21-2-202(a)(xiv)</i>	NA	NA	Superintendent	Superintendent Amended

Responsibility/Authority	← 1969	1987	1994	1997 →
Assist the professional teaching standards board (PTSB) in the performance of its duties, including providing information to the Board upon request. <i>Added in 1993, when PTSB was established. ch. 217. W.S. 21-2-202(a)(xvi)</i>	NA	NA	Superintendent 1993	Superintendent
Include in the Department's budget request recommendations for school foundation program account appropriations and appropriations to the account necessary to fund payments to school districts as required by law, and recommendations for appropriations for special programs. <i>Added 1993, ch. 125 W.S. 21-2-202(xvii)(A) and (B)</i>	NA	NA	Superintendent 1993	Superintendent
Promulgate rules assuring children with disabilities receive free and appropriate education. TRANSFERRED FROM THE STATE BOARD. <i>W.S. 21-2-202(a)(xviii)</i>	State Board	State Board	Superintendent	Superintendent
Serve as the agency to accept all federal funds, establish a state plan to qualify the state for federal funds, provide technical advice to local educational agencies to obtain federal funds. <i>W.S. 21-2-202(a)(xix)</i> TRANSFERRED FROM BOARD	State Board	State Board	Superintendent	Superintendent
Designate an employee of the Department to serve as liaison to the State Board. <i>W.S. 21-2-202(b)</i>	NA	State Board	Superintendent	Superintendent
Take appropriate action with the State Board, including but not limited to changing accreditation status, against any school district or state institution failing to comply with any applicable law or with the uniform educational programs standards specified under W.S. 21-9-101 and 21-9-102 and the student content and performance standards prescribed by the State Board. <i>W.S. 21-2-202(c)</i>	NA	NA	Superintendent	Superintendent with the State Board 2002
Develop and implement a statewide education technology plan. <i>W.S. 21-2-202(a)(xx)</i>	NA	NA	NA	Superintendent
Establish and maintain a uniform stateside reporting system based upon the statewide student assessment implemented by the State Board. <i>W.S. 21-2-202(a)(xxi)</i>	NA	NA	NA	Superintendent
Administer the school finance, data management, and reporting system for school funding. <i>W.S. 21-2-203(c)(i)</i>	NA	NA	NA	Superintendent 1998
Promulgate rules to administer the school finance, data management and reporting system for the funding of public schools. <i>W.S. 21-2-203(c)(l)</i>	NA	NA	NA	Superintendent 1998
Establish guidelines for school districts for the safe storage and disposal of toxic chemicals and other hazardous substances. <i>W.S. 21-2-201(a)(xxii)</i>	NA	NA	NA	Superintendent 2001
Establish statewide guidelines for adequate special education staffing levels, monitor school district special education service delivery practices, develop procedures. <i>W.S. 21-2-202(a)(xxii) – (xxv)</i>	NA	NA	NA	Superintendent 2003
Develop a process and procedures for waivers for career-vocational programs, a grant program, monitoring, and district reporting of vocational education expenditures to implement and administer W.S. 21-13-329, the adjustment to the foundation program formula for vocational education. <i>W.S. 21-2-202(a)(xxvi) – (xxix)</i>	NA	NA	NA	Superintendent 2003
Employ legal counsel to review contracts entered into by the Superintendent. <i>W.S. 21-2-202(a)(xix)(J)</i>	NA	NA	NA	Superintendent 2004

Selected State Board Duties, 1969 – Present

Responsibility/Authority	← 1969	1987	1994	1997 →
Hold a meeting during the first quarter of a calendar year and select a chairman. Meet at the call of the Superintendent, the Governor, or the Board chairman. May hold other meetings at regular intervals as the duties require. <i>W.S. 21-2-301(b)</i>	State Board	State Board	State Board	State Board
Prescribe minimum standards for public schools, including general education programs, site selection and building of public schools. <i>W.S. 21-2-304(b)(i)</i> REPEALED IN 1997	State Board	State Board	State Board	Repealed (replaced)
Through accreditation of school districts, implement and enforce the uniform standards for education programs prescribed under W.S. 21-9-101 – 102. <i>W.S. 21-2-304(a)(ii)</i>	State Board	State Board	State Board	State Board
Enforce the uniform state educational program standards imposed by W.S. 21-9-101 and 21-9-102 and the uniform student content and performance standards established by rules and regulations by taking appropriate administrative action with the Superintendent, including but not limited to changing accreditation status. <i>W.S. 21-2-304(b)(ii)</i>	State Board with or without the Superintendent	State Board with or without the Superintendent	State Board with the Superintendent	State Board with the Superintendent
Initiate or facilitate discussions regarding the need and means for improving education. <i>W.S. 21-2-304(b)(v)</i>	State Board	State Board	State Board	State Board
Along with the Superintendent, report to the governor and recommend legislation and appropriations for education and educational activities. <i>W.S. 21-2-306</i>	State Board Superintendent	State Board Superintendent	State Board Superintendent	State Board Superintendent
Act with the Superintendent as the "State Committee" to approve or reject proposals for organization or reorganization of school district boundaries. <i>W.S. 21-6-202, 21-6-210(a)</i>	State Board Superintendent	State Board Superintendent	State Board Superintendent	State Board Superintendent
Approve or disapprove agreements to form BOCES. <i>W.S. 21-20-104(a)</i>	State Board	State Board	State Board	State Board
Prescribe rules for administering the laws governing the certification of school administrators, teachers and other personnel. <i>W.S. 21-2-304(b)(iii)</i> REPEALED IN 1993	State Board	State Board	PTSB 1993	PTSB
Print and distribute to local school districts the school laws, regulations, forms and reports. <i>W.S. 21-2-304(b)(vi)</i> REPEALED IN 1987 - TRANSFERRED TO SUPERINTENDENT	State Board	Repealed Transferred	Superintendent	Superintendent
Promulgate rules under which the Superintendent may accept and disburse federal funds for school lunch programs. <i>W.S. 21-2-304(b)(ix)</i> REPEALED IN 1994 - TRANSFERRED	State Board	State Board	Repealed Transferred	Superintendent
Serve as the state agency to accept all federal funds for education, and to supervise the programs. <i>W.S. 21-2-304(b)(xii)</i> REPEALED IN 1994 - TRANSFERRED	State Board	State Board	Repealed Transferred	Superintendent
Review actions of the Department of Education by which school districts are aggrieved. <i>W.S. 21-2-304(b)(xii)</i> REPEALED IN 1994	State Board	State Board	Repealed	NA
Promulgate rules assuring children with disabilities receive free and appropriate education. <i>W.S. 21-2-304(a)(xi)</i> REPEALED IN 1994 - TRANSFERRED TO THE SUPERINTENDENT	State Board	State Board	Repealed Transferred	Superintendent
License private schools as provided under W.S. 21-2-401 – 407. <i>W.S. 21-2-304(b)(x)</i>		State Board	State Board	State Board
Approve or reject alternative scheduling for districts requesting to operate for less than 175 days in a school year. <i>W.S. 21-2-304(b)(viii)</i>	NA	State Board 1985	State Board	State Board

Responsibility/Authority	← 1969	1987	1994	1997 →
Establish minimum standards for trade, correspondence, distance education, technical, vocational, business or other private schools and all degree-granting post secondary schools not accredited and insure Department inspects them. <i>W.S. 21-2-401(d)</i>		State Board 1985	State Board	State Board
Establish policies for public education consistent with the Wyoming Constitution and statutes. May promulgate rules necessary to implement Title 21 and its responsibilities under this title. Shall not have rulemaking authority in any area specifically delegated to the Superintendent. <i>W.S. 21-2-304(a)(i)</i>	NA	State Board	State Board	State Board
Establish improvement goals for public schools. <i>W.S. 21-2-304(b)(xiv)</i> 1990	NA	NA	State Board 1990	State Board
Promulgate rules for the development, assessment and approval of school district teacher performance evaluation systems. <i>W.S. 21-2-304(b)(xv)</i> 1993	NA	NA	State Board 1993	State Board
Implement, administer, and supervise, through the Superintendent, education programs for visually handicapped and hearing impaired adults. <i>W.S. 21-2-304(b)(xvi)</i> 1993	NA	NA	State Board 1993	State Board
Establish statewide goals for Wyoming public education. <i>W.S. 21-2-304(e)</i>	NA	NA	State Board	State Board
Serve as the State Board of Vocational Education, promulgate rules, and review district career-vocational education plans. <i>W.S. 21-12-101, W.S. 21-2-307(b)</i>	State Board	State Board	State Board	State Board
Perform ongoing review of state board duties and make recommendations regarding board duties to the Legislature. At least every 5 years, evaluate and review the educational program standards and student content and performance standards and report findings and recommendations to the Joint Education Committee. <i>W.S. 21-2-304(c)</i>	NA	NA	State Board	State Board
In consultation with local school districts, promulgate rules to prescribe uniform student content and performance standards for the common core of knowledge and common core of skills specified under W.S. 21-9-101(b) and promulgate uniform standards for programs addressing the special needs of student populations specified under W.S. 21-9-101(c). <i>W.S. 21-2-304(a)(iii)</i>	Replaced repealed W.S. 21-2-304(b)(i)	Replaced repealed W.S. 21-2-304(b)(i)	Replaced repealed W.S. 21-2-304(b)(i)	State Board in consultation with school districts
Establish requirements for a high school diploma as measured by each district's body of evidence assessment system. <i>W.S. 21-2-304(a)(iv)</i>	NA	NA	NA	State Board 2002
Implement through the Superintendent a statewide assessment system for measuring student progress based upon uniform educational program and student content and performance standards imposed by law and Board rules. <i>W.S. 21-2-304(a)(v)</i>	NA	NA	NA	State Board through the Superintendent
Grant or deny requests by charter schools for release from state statutes and rules, decide appeals from district board decisions relating to charter schools. <i>W.S. 21-3-305(c), W.S. 21-3-310(b)</i>	NA	NA	NA	State Board 2001
From school year 2005-2006 on, through the Superintendent and in consultation with local districts, establish a statewide accountability system in rules. <i>W.S. 21-2-304(a)(vi)</i> 2004	NA	NA	NA	State Board through the Superintendent 2004

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CHAPTER 2

Fundamental tension exists in state-level education governance

The Legislature is also a major player in state-level education governance.

Chapter Summary

Since 1987, the Legislature has enacted a series of statutory changes that have created both a system of checks and balances and a basis for tension in state-level education governance. This period has also seen major reforms in how the state handles education, assigning more control than ever before at the state level. Throughout this reform process, by creating task forces and playing a major role itself, the Legislature has broadened state-level policymaking in education beyond the Superintendent and the State Board of Education. Yet, tension has developed between these two players with respect to how they interact to meet their statutory responsibilities. This chapter discusses the primary areas of contention between the State Board and the Superintendent, and how the statutory allocation of duties between the two may have created the potential for this tension. If policymakers believe such a tension is detrimental rather than constructive, they may consider options to alleviate it, as discussed in Chapter 4.

Tension became more apparent during the former Superintendent's administration

The Management Audit Committee questioned whether there is a structural basis to this tension.

Although tension between the elected Superintendent and the appointed State Board has arisen from time to time, it became especially evident in recent years. This tension prompted the Board to request an Attorney General clarification of its statutory authority and responsibilities, and the Superintendent to request a Joint Education Committee study of the of the State Board's role. After the Superintendent's resignation, the Management Audit Committee undertook this review to determine if there is a structural basis for such tension, apart from the individuals involved in the relationship at any particular time.

The Attorney General responded to the State Board's request with

The Attorney General said statutory language is “clear and unambiguous.”

a straightforward answer: The statutory language is “clear and unambiguous,” assigning the State Board with establishing education policy in the state and the State Superintendent with administering and implementing that policy. Further, the Superintendent directs the expenditure of appropriated funds in order to carry out State Board policies.

The Superintendent’s view was that there is not clear differentiation between the roles.

Notwithstanding the Attorney General’s view, the Superintendent’s position was that the Board’s duties have evolved significantly but not necessarily strategically over the course of education reform, and that there should be a clear differentiation between advisory roles and responsibility for leadership and implementation of education policy.

The Attorney General also said that the statutory language “clearly contemplates a cooperative relationship between the State Board and the State Superintendent.” Through numerous interviews with individuals who have been involved in this relationship over time, we identified the following as the major sticking points that interfere with what the Attorney General interpreted as intended cooperation.

Superintendent: Has the accountability but not the authority to make final decisions in many critical areas

Superintendents want leadership in making educational decisions important to voters.

From the Superintendent perspective, a major source of tension in the relationship with the appointed State Board is that the public holds the Superintendent accountable for most if not all of State Board policies and decisions. Many State Board decisions involve aspects of education important to voters, such as graduation requirements and student performance assessments. Unless they take a leadership position in those issues, Superintendents believe they cannot fully take charge of their political futures.

Wyoming statutes have traditionally given the State Board authority to set standards for learning, and to evaluate and accredit schools. Throughout its school reform efforts beginning in 1997, the Legislature has maintained State Board authority in these key areas, and has assigned it policy- and decision-making in other critical areas, such as assessment implementation and graduation

In its school reform measures, the Legislature has assigned the State Board decision-making authority in critical areas.

requirements, among others. These aspects of education governance are of great importance to the public as well as to candidates for the Superintendent office, and ultimately, the Superintendents themselves.

These are also policy areas of great interest to citizens and Superintendents.

An aspect of discord became apparent in 2004 when the Legislature modified the statewide assessment system required by statute (W.S. 21-2-304(a)(v)) to comply with federal No Child Left Behind Act of 2001 (NCLB) requirements. The State Board is responsible, “through the superintendent and in consultation and coordination with local school districts,” for implementing a statewide assessment system. However, the Superintendent wanted a dominant role in changing the statewide assessment because it was an issue on which he had campaigned. Provisions in the final legislation effectively gave the Superintendent primary authority to work with the statewide task force that law created to revise the assessment. The Board’s role was relegated to receiving reports on the task force recommendations and the proposed transitional plan to the new assessment.

State Board: Must rely upon the Department for information and resources necessary to carry out its responsibilities

The Board’s capacity for independent policymaking is thwarted.

The State Board has limited ability to act independently from the Department, which is supervised by the Superintendent. Thus, its ability to be independent in its policymaking or adjudicatory duties in complex and nuanced educational areas is thwarted because it must rely upon the Department for most information. Professional Department staff to do the “leg work” and provide the information necessary for the Board to make informed decisions. As a Board member said, “It is difficult for us to get research and information behind a policy. We are not really capable of doing that sort of research.” For legal guidance, the Board can turn the Attorney General’s Office, and during the former Superintendent’s administration, the Board became more reliant upon that assistance.

Superintendent

Difficulty can arise if there is a disagreement between the Superintendent and the Board about how to proceed on a policy. Board members have not always been able to obtain the information they believe they need because different admin-

administrations have allowed the Board varying access to Department staff.

administrations have allowed varying degrees of access to individual staff members, ranging from complete and open to none. If a Superintendent does not want Department staff to provide support to the Board, members feel they have no recourse.

On their own, board members have some access to general expertise and research through the Board's membership in NASBE. NASBE membership primarily provides board development opportunities through conferences, publications, technical assistance, and field services. Wyoming's State Board has received assistance from NASBE in conducting an annual planning retreat, and one member currently serves in an elected leadership post in the organization.

The Superintendent's control of Department resources can leave the Board unable to "implement"

Statutes charge the State Board with implementing, enforcing, and establishing a number of items, including uniform standards and a statewide assessment. Throughout most recent Superintendent administrations, a shared understanding has existed that the Superintendent and the State Board must reach collaborative agreements and go forward with fulfilling the duties required by statute. Provisions in statute state that neither the Superintendent nor the Board will make rules in areas specifically delegated to the other, but disputes arise in areas other than rulemaking. For example, there can be disagreement between the Board and the Superintendent over communications and the deployment of Department resources. The Superintendent could choose not to notify the Board of information pertinent to its statutory responsibilities, or not to direct Department resources in support of Board responsibilities.

Without the Superintendent's resources, the Board cannot do what statute directs.

An example from 2003 of the stalemate that can occur between the two involved the implementation of the body of evidence assessment (BOE). By 2006, statute requires each district to have a BOE assessment to measure high school graduation requirements, and the Board to promulgate rules for these assessments. The Superintendent pulled back Department resources from assisting districts with their BOE assessments, and told the districts they were no longer required to work on them. The Board wanted to continue to have Department assistance

available, and believed the Superintendent undermined its efforts in implementing BOE assessments.

Superintendent and Board can differ on the scope of the Board's role

Statute tells the Board to be both action-specific and contemplative.

The Department, led by the Superintendent, prefers for the Board to focus on those duties which require specific Board actions on work products developed by staff, such as reviewing and approving educational program standards, approving or disapproving alternative school district scheduling, or promulgating rules in the various areas for which it has responsibility for rules. As one former official put it, "The board has a pretty darn big job description. If they start nosing around in other stuff, they won't get to what they are legislatively required to do."

Board members are increasingly interested in the broader policy-making role.

However, statutes tell the Board to be contemplative and probing. They charge the State Board with establishing policies for public education in the state consistent with the Constitution and statutes, initiating discussions about the needs of and means for improving education, and setting statewide goals for Wyoming public education. Board members are increasingly interested in this broader role. Some chafe at a narrow interpretation of the Board's role that makes it simply reactive to information presented by the Department in the form of recommended action items at their meetings. Board members have sensed that they were not encouraged by the Department and Superintendent to be proactive, but believe they can best contribute by engaging policymakers in a wider dialog about education in the state.

Currently, the Board wants to better

For example, the current Board has an interest in developing a larger role with respect to career and technical education (CTE), which is also an issue in current school finance litigation. The Board sees two fronts in which it would like to become more active. One is in reviewing the state's career/vocational education content and performance standards to ensure that high school students receive the skills they need, and the other is in better defining its role as the State Board of Vocational Education. Although it has the statutory option, the Board has not adopted rules in this capacity. The Department sees a limited Board CTE

define its role as the State Board of Vocational Education.

responsibility, that of reviewing standards, which is scheduled to be done again in 2008.

The Superintendent must balance Board requests with other priorities, many assigned by the Legislature.

Regardless of what the Board takes up as its initiatives, the Superintendent and other Department officials must balance requests for assistance with other priorities, many assigned directly by the Legislature. This can leave Department staff in a bind, especially if they sense that the Superintendent does not share the Board's interest in a topic. There is also the potential for the Board to abuse Department resources, but no one we interviewed indicated that had happened. As one Department official noted, "Somehow we make it happen."

Even though the Board has the authority to prescribe uniform student content and performance standards, and to implement a statewide assessment system, it is not clear that it must approve what the Department, design teams, and task forces develop as these products. Further, the Legislature itself makes many of the significant decisions affecting the Board's responsibilities, and requires reports be made directly to its committees

Statutory allocation of duties sets up the tension

The scope and content of their respective duties have changed and grown.

LSO looked at how statutes have changed over the last two decades to see if changes in assigned duties may have contributed to increased tension between the two state-level entities. As illustrated in the chart on pages 10-13, the scope and content of the respective duties of the Superintendent and the State Board have been considerably changed and enhanced. Unless otherwise indicated, the changes we discuss below are still in place.

1987 legislation broadened State Board purview

In 1987, the Legislature passed a bill that consolidated State Board duties into one chapter and added to them. A key addition to the Board's responsibilities was the charge of establishing policies for public education in the state consistent with the Constitution and statutes. This legislation also created a new section to consolidate the responsibilities of the State Board acting as the State Board of Vocational Education.

1987 changes placed the Department solely under the Superintendent's supervision.

Legislative changes in 1987 clarified the duties of the State Superintendent. One clarification was to put the Department solely under the Superintendent's supervision, staffed with the personnel he determined necessary to assist him in the discharge of his duties. The 1987 additions also included requirements for the Superintendent to provide the State Board with information it requested, and a Department liaison to field requests for staff assistance.

1990 legislation charged the State Board with setting comprehensive goals for state public education

As part of a large bill that primarily addressed school finance ('90 Laws, Ch. 122), the Legislature added to both the membership of the State Board and its duties. Two at-large positions representing private business or industry were added, enlarging the Board to its current membership of eleven. The Legislature also required the State Board to prescribe minimum standards for assessment of student progress and to establish goals for education. Thus, in 1990, the Legislature placed the Board in a central policy role in what was to evolve into the state's school reform effort.

The Legislature gave the Board duties that would become central in school reform.

This legislation also directed the Department to transfer funding from its budget to cover a full-time position, separate and independent of the Superintendent and the Department, to perform duties directed by the State Board. As implied earlier, such an independent position no longer exists.

In 1993, PTSB took over teacher certification from the State Board.

Two years later, the Legislature moved the responsibility for certifying teachers and administrator from the State Board to the newly-created Professional Teaching Standards Board (PTSB). Since its establishment in 1917, certification had been a major State Board responsibility.

1994 legislation was another attempt to clarify duties

According to former officials, the Department and the Board reached a transition point in 1992 that led to the Board's examination of its purpose. Both the Superintendent and the State Board determined that certain duties were misplaced between the two. Thus, they reached agreement and worked with the

Legislature to pass legislation that once again aimed to clarify their respective duties ('94 Laws, Ch. 17).

Responsibility for federal programs transferred from the Board to the Superintendent.

In its preliminary work sorting out the responsibilities, the Board concentrated upon keeping those duties it believed it could realistically accomplish without a staff, and on transferring to the Superintendent those over which it had little oversight. Among the transferred duties were those of promulgating rules to accept and distribute federal funds for commodities programs and to ensure that disabled children receive free and appropriate education.

Because of "No Child Left Behind," federal programs are now intertwined with Board functions.

Since 1994, the national education environment has changed, making another transferred responsibility from then a potential area for conflict between the Superintendent and the Board. This was the transfer of the designation as the state agency to accept and administer federal funds for education in the state. Because of the change, the Superintendent establishes a plan to qualify the state for federal funds, and provides technical advice and assistance to school districts for obtaining such funds, among other actions. With the passage of NCLB, this responsibility has become intricately intertwined with the same academic policies, such as assessment and standards-setting, that are Board functions.

Legislation repealed the Superintendent's authority to decide controversies with the State Board.

The 1994 legislation also repealed a provision that established clear final authority between the Superintendent and the State Board. Until then, it had been the Superintendent's authority to decide controversies arising from the administration of the state school system, involving rules or directives promulgated by the Superintendent, Department, or State Board. It also repealed the Board's authority to receive contested case appeals from school districts aggrieved by Department actions, and added a provision in the Superintendent's statutory scheme allowing school districts aggrieved by an act of the State Superintendent to seek review in accordance with the Wyoming Administrative Procedure Act (W.S. 21-2-202(d)).

1997 school reform and its aftermath added mostly to State Board statutory responsibilities, in theory

The Superintendent acquired extensive duties related to the transition to a new finance system.

In a 1997 Special Session, the Legislature passed legislation in response to the Supreme Court decision in Campbell Co. School District No. 1, et al. v. State of Wyoming, et al. Through this, “School Reform-1” (’97 Spec. Session, Ch. 3), the Legislature assigned extensive duties to the State Superintendent in order to begin the implementation of a new finance system and to assist in the development of a school system that ensured equitable opportunity for a proper education. Many of these duties had to do with administrative procedures such as collecting information on various topics from school districts and developing reporting procedure recommendations. School Reform-1 also directed the Department to work with a statewide design team to establish a student assessment system. In contrast, the Legislature did not assign the State Board much responsibility in the actual school reform tasks during the transition period.

The heart and soul of academic school reform went to the State Board, in statutes.

However, in permanent statutes, the Legislature placed the heart and soul of the state’s school reform effort with the State Board, and charged the Superintendent primarily with information-gathering tasks. The State Board’s statutes were greatly enhanced, to include such key responsibilities as: enforcing the uniform standards for education (the “basket of educational goods and services”) through accreditation of public schools; prescribing uniform student performance standards including high school graduation standards; and implementing, through the Superintendent and in consultation and coordination with local school districts, a statewide assessment system for measuring student progress.

The Board is charged with implementing key provisions of school reform.

Thus, the Legislature gave the appointed board instead of the elected official the major role of -- not approving or advising upon policy -- but of *implementing* key provisions of school reform in the state. Implementation, by definition, suggests the performance of acts necessary to bring into effect some agreed upon plan or policy. Realistically, the Board has no way to implement its duties other than through the Superintendent and the Department. Statute compensates for this by saying that the Board will establish or implement various standards or tasks “through the superintendent,” “with the superintendent,” or “through the state department of education.”

It is the Department, not the Board, that actually does this work, by organizing and supporting task forces of experts and school district personnel in which it plays a major role. The Legislature has recognized this by appropriating funds to the Department to undertake tasks that clearly fall under State Board responsibilities.

Post 1997 legislation fueled the tension

2002 legislation required the State Board to modify requirements for high school graduation.

Since the major reform legislation in 1997, the Legislature has modified statutes that affect areas in which tension has arisen. For example, in 2002, it added to the Board's responsibility the establishment of modified requirements for high school graduation that incorporated three different kinds of graduation endorsements. This amendment also required the Board to adopt rules for districts to follow in developing assessments for students, demonstrating they earned diplomas. This Board responsibility became a conflict with the Superintendent, who did not support this approach.

In addressing voc-ed funding in 2003, the Legislature assigned several tasks to the Superintendent.

The Legislature passed a large bill in 2003 primarily related to vocational education financing. This legislation assigned several detailed responsibilities to the Superintendent dealing with funding vocational education programs in the districts. It also gave the Board, acting as the State Board of Vocational Education, the responsibility of reviewing school district vocational education programs to ensure that they satisfactorily serve student needs and are aligned with state content and performance standards. Arguably, this is a redundant provision, because the State Board already had the responsibility to evaluate and accredit all school districts according to the state's uniform standards for educational programs. However, it may have prompted the Board's interest in more clearly defining a role for itself in this high-profile area.

Finally, 2004 legislation added significant amounts to the Board's assessment implementation responsibility to bring it into compliance with federal law. This was also the legislation that gave the Superintendent, instead of the Board, primary responsibility to work with a statewide task force in developing a new assessment, which caused the friction discussed above.

Placing academic school reform requirements with the State Board seems logical, given its historical duties

The Board has long set academic standards and accredited schools.

State Board statutes serve as a place where the Legislature has documented much of the academic content of the state's school reform plan. Since the State Board has long had the responsibilities of setting standards and accrediting schools, this seems like a logical extension of its duties. However, another view is that this was intentionally done, so that the Board can share with the Legislature and Superintendent the brunt of criticism for imposing more state control in public education.

But the Board has relied upon the Department to do the actual work.

For whatever reason it was done, in assigning this responsibility to a volunteer board without staff, the Legislature has acknowledged that the Department, under the direction of the Superintendent, will be doing the work to develop the assessments, standards, and other components of academic school reform. It does not appear that the Legislature contemplated the State Board would actually do this on its own, or have the authority to impede what the Department, through processes designed to obtain broad input, develops.

Many see benefits to the State Board sharing authority

Despite the tension created by this arrangement, many of those we interviewed agreed there are advantages to having a State Board. Paramount in their thinking was that with Board input, policy in critical areas of education can be more consistent. The Board brings continuity through election cycles because its membership is staggered in six-year terms, whereas Superintendents can change every four years. Other advantages cited include that the State Board:

The chief benefits mentioned were that the Board brings continuity and a lay citizen perspective.

- Is a structure through which a group of committed citizens can represent the concerns of their districts when interacting with the Superintendent and the Department.
- As a lay board, provides checks and balances to policies and initiatives developed by state-level professionals.

- Makes policy in this important area that affects so many not under the control of one person, the Superintendent.
- Helps garner support among both the public and the Legislature for the Superintendent and Department in the implementation of education policy.
- Brings increased attention and a celebratory aspect to education throughout the state by holding meetings in different communities and visiting schools.

This point of view also holds that conflicts, when they occur, are a natural and valuable part of policy development. Some described it as a creative or healthy tension, rather than a negative.

Influence comes through hiring and supervising key Department personnel.

Superintendent has ability to influence State Board

Although having no vote on the State Board, the Superintendent nevertheless has considerable influence on its operations and decisions. Our interviews with current and former Board members confirmed what might be intuitively assumed: through the hiring and day-to-day supervision of key personnel, and through the constant decision-making that is part of education administration at the state level, the Superintendent is intricately involved in all the Department work done to develop and implement Board policies. Department officials, past and present, note that Department work products nearly always go before the Superintendent or the Deputy for approval.

The position is more powerful than the 2003 A.G. opinion indicated.

In addition to having this subtle influence, the Superintendent can exert more overt pressure: by openly working to persuade the Board, by hiring desired experts, by managing the flow of information from Department staff to the Board, and simply by virtue of his or her participation in Board discussions as one of the state's top five elected officials. Although the Attorney General's 2003 informal opinion held that the Superintendent position is meant to be ministerial, it has been historically and is still in practice a far more powerful position than that.

Statutes are based on the assumption that the Superintendent and the State Board will function cooperatively

There seems to be an expectation that more informed eyes make better policy.

Through its statutes, the Legislature has set up a complex and interdependent state-level governance structure that requires the Superintendent and the State Board to work cooperatively. It does not appear that the Legislature expects the two to come forward with competing or differing initiatives or proposals, given the inability of the Board to either prepare researched positions or implement anything on its own. That does not imply, however, that the Board is nominal, in place to rubber-stamp whatever the Department presents to it. Rather, there seems to be an expectation that more informed eyes make better education policy, and the Board is a means of providing those informed eyes.

Tension can arise, in part because the Board requires the Superintendent's staff and resources.

Through our interviews, we learned that generally the individuals involved in this delicate relationship have worked through their differences, driven by a desire to do what is best for public education in the state and by respect for one another and the law. However, the potential for tension between an elected official and a board appointed by another elected official is close beneath the surface, especially given that the Board has a statutory-given call upon the Superintendent's staff and resources.

In the next two chapters, we discuss what we learned about other states with similar governance structures and offer options that the Legislature, Superintendent, or State Board might consider to address the points of contention raised in this chapter. Whether or not any of the options is adopted depends upon whether affected policymakers believe the tension warrants action.

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CHAPTER 3

Other similarly structured states also struggle with governance issues

Variations on Wyoming's model of education governance

Most states are set up according to one of four basic models of state education governance, Wyoming being one of 11 with an elected superintendent and a governor-appointed state board. In 1991, during reorganization of state government, the Wyoming Legislature considered establishing an entirely different structure, one that would have abolished the office of superintendent and replaced it with a Board of Regents responsible for all levels of education. The Legislature rejected that proposal and other major changes, ultimately deciding to keep the state's traditional model.

Wyoming has considered and rejected changing its structure.

Because radical change has been considered and rejected, we looked at the ten other states with similar education governance structures to see if their systems differ from Wyoming's in ways that offer strong advantages. The purpose was to offer ideas for modification that might fine-tune Wyoming's existing system. We found significant variation in the internal organization as well as the balance of duties and responsibilities among these other states, yet most of them acknowledge that tensions arise sometimes between their chief education officer and their state board. Although this creates occasional difficulty and organizational challenges, they also acknowledge the importance of both the superintendent and the board in contributing to a complete picture for the education system.

Other states' structures provide options for change.

In this chapter we draw on the similarly-structured states for what can be learned with regard to possible modifications. The features are: (1) the Superintendent has accountability but not authority; (2) the Board must rely upon Department staff over which it has no control; (3) the scope of the Board's role; and (4) which entity has the final authority.

Reorganization of state government did not produce significant changes in Wyoming's education governance structure

Past Legislatures have considered a governor-appointed chief education officer.

In 1989, the Joint Legislative-Executive Efficiency Study Committee recommended formulation of a cabinet-level Department of Education which would encompass all education activities at the state level: elementary and secondary education, community colleges, the Western Interstate Commission for Higher Education, and the University of Wyoming. The 1989 Legislature considered a constitutional amendment that would have paved the way for the Governor to appoint the proposed Department director. Although the measure passed the Senate, it encountered stiff opposition in the House of Representatives and failed.

The Study Committee continued to search for an acceptable means of bringing all education sectors under the cabinet umbrella, and two years later again recommended revising the state's educational structure, this time into a Board of Regents. As noted above, that attempt failed and there have not been serious attempts to reconfigure the system since then.

Eleven states fall under the same model of education governance, but still vary greatly

States individualize their governance structures.

The National Association of State Boards of Education (NASBE) and the Education Commission of the States have developed charts that categorize the generally accepted main models of education governance currently in practice throughout the United States (see Appendix B-1). Neither organization holds that a particular model is superior to others; instead, they explain that there is considerable variation among states because each developed a preferred structure according to its own customs and traditions. For example, in some states, board members are elected and they appoint the chief state school officer; in others, the governor appoints the chief officer. Accordingly, we were unable to identify a single "best practice" model for state education governance systems.

The ten other states that, like Wyoming, elect a superintendent and

permit the governor to appoint state board members are: Arizona, California, Georgia, Idaho, Indiana, Montana, North Carolina, North Dakota, Oklahoma, and Oregon. All but three – Georgia, Indiana, and North Carolina – are western states. Each of these states has different demographics, needs, and educational priorities which understandably influence the infrastructure of their particular system. Thus we found distinct variations among them in how education is organized at the state level.

Each state’s system may have its own strengths and weaknesses

Maintaining a balanced relationship is also a challenge for other states.

We contacted key personnel in these states and learned that their systems are not exempt from concerns about the working relationship between their state board and superintendent. Several said that even if things are going well now, they may not have run smoothly in the past. The balance in the relationship can be tenuous, with several indicating the dynamics are about to change because of recent board appointments. Others indicated their current working relationship could change for better or worse depending on what happens in the next election.

For the most part, states currently enjoying a smooth relationship attribute this cohesiveness to a same-mindedness or political synchronicity on the part of their superintendent and board members, or alternatively, to strong positive leadership committed to providing direction and cooperation. Given this context, we asked questions in several areas we had identified as “sticking points” in Wyoming’s governance structure.

What authority does the Superintendent have?

Superintendents generally oversee the department and implement policy.

While the superintendents in the ten states we compared are elected officials, the responsibilities assigned to them vary according to statutory and constitutional requirements unique to each state. Generally, superintendents are in charge of, or the chief executive officers of, the education department and are responsible for overseeing implementation of education programs. The primary exception is Idaho, which has made the state board its governing body for all of education in the state including post-secondary; the superintendent is responsible to the state board only when he deals with kindergarten through grade 12 public

education matters.

Several states give the Superintendent a formal voice on the State Board.

Wyoming's Superintendent, an ex-officio member of the State Board, does not have a vote. Three other states (North Dakota, California, and North Carolina) have similar provisions, but five states (Idaho, Arizona, Indiana, North Dakota, and Oklahoma) make the superintendent a voting member of the state board. This gives the superintendent a formal voice in policy making and a say in approving board actions. Indiana's Superintendent is also the chairman of the state board and thus has considerable discretion in setting the board's agenda.

Figure 3.1

**State Boards of Education
Selected Membership Features**

State	Number of appointed members/Length of term in years	Superintendent is a voting member	Appointments have balanced political affiliation
Arizona	11/4	Yes	No
California	11/4	No	No
Georgia	13/7	No	No
Idaho	7/5	Yes	No
Indiana	10/6	Yes	Yes
Montana	7/7	No	Yes
North Carolina	11/8	No	No
North Dakota	6/4	Yes	No
Oklahoma	6/6	Yes	No
Oregon	7/4	No	No
Wyoming	11/6	No	Yes

Source: LSO

Overlapping authority between

In half the states we contacted, the superintendent is charged with overseeing federal programs while the state board has authority over standards and graduation requirements. Officials in these states mentioned recent federally-mandated No Child Left Behind regulations as providing more of an entree into policy making on the superintendent's part, or at least making the lines of authority somewhat more overlapping and on occasion contentious.

***the Superintendent
and State Board may
create friction.***

In six of the states, the superintendent also serves on other state boards as part of his or her elected official responsibilities. In Idaho for example, the superintendent serves on numerous boards and committees. In most of these six states, superintendents serve on their state land board as well as state investment and retirement boards. Staff from several states commented on the considerable time their superintendents spend on those responsibilities, which often are not directly education-related.

How does the Board get the information it needs to make informed decisions?

In Wyoming, the State Board relies on the Department of Education to provide complete, accurate, and timely information and materials. In the past, access to department personnel and resources has varied based on the individual Superintendent's administrative style and view of the State Board. The relationship has run the gamut from full access to all staff, to Board members being required to conduct all inquiries through the staff liaison designated by the Superintendent.

***State boards have
support staff based
on extent of duties.***

In the other similarly structured states, the most common staffing structure is an executive director and one or two support staff. Idaho is the major exception, in that its board has full authority over the entire department as well as the elected superintendent. At the other end of the spectrum is North Dakota, whose board has very specific and limited authority; it is staffed by a single liaison supplied by the department.

What is the scope of the Board's role?

Wyoming statutes assign responsibility for establishing state education policy to the Board. Most of the other ten states also describe their boards as being responsible for approving policy, especially over areas of standards, assessment, graduation requirements, and accreditation. The charge of the California board also includes monitoring and implementing standards, and overseeing charter schools and federal programs. Several state boards provide an appeal process for teacher licensing and other local school board issues.

***Wyoming's State
Board establishes
policy.***

State boards may have full authority, authority over specific issues, or almost no authority.

Who has final authority?

As with the other issues we compared, the authority of a state board varies in degree, by issue, and by state. One state we contacted has a board with policy making ability and approval by law, although in reality policy is developed by the department while the board is said to “rubber stamp” their work. The converse is true for three states: Idaho, Georgia, and North Carolina give their state boards final authority on policy matters, with Idaho’s board having authority on all educational matters. In North Carolina, the issue of final authority was resolved in favor of the State Board after the Superintendent sued the State Board.

In other states, the board may be designated as the state agency for specific areas of education, giving it final authority over those issues. Or the state board may have clearly defined authority in a specific area such as teacher licensing, and an implied or perceived final authority in other areas. For most states, however, the hierarchy of authority is not defined in statute; instead, it is subject to the interpretation and customs of the department and the individuals involved.

Other states’ structures appear to contain their share of ambiguity and “healthy tension”

Greater collaboration may produce better results.

Our review of similar states’ governance models provided interesting and almost infinite points of comparison, but did not point to specific, inherently superior, adaptations of the system. The comparison suggests that, given its model of elected superintendent and appointed board, the tension within Wyoming’s system is not unusual. It also suggests that interlocking responsibilities, while creating occasional conflict, may lead to full discussion of critical issues, and in the end generate a more collaborative body of policy.

CHAPTER 4

Options to reduce the potential for tension in the State Board/Superintendent relationship

Chapter Summary

We did not see consequences that compel radical changes in structure.

The Superintendent and State Board are traditional institutions in Wyoming's state-level administration of education, and in the case of the Superintendent, in other important state-level governance arrangements as well. There are intangible as well as practical reasons for maintaining these institutions. Our research did not indicate that the current structure creates consequences compelling enough to make radical changes, such as abolishing the State Board or changing the Constitution so that the Superintendent is no longer a statewide elected official.

Thus, we present some options that apply to the sources of tension we learned about in our research, some of which borrow from other states with the same basic model. Implementing any of these options depends upon whether policymakers believe the potential for occasional tension is untenable, or whether they see value in the complex relationship now in place.

Independent orientations could better communicate the roles of the two

The Office of the Attorney General could provide an orientation to statutory duties.

A basic step, and one which is already being implemented to some degree with the Board, is to conduct orientations on roles and responsibilities for both new Board members and Superintendents, preferably when the latter are candidates. A review of statutory responsibilities along with a frank discussion of the cooperation required by the state's governance arrangement could alleviate potential misunderstandings on the part of both. Moreover, Department personnel, who may tend to narrowly perceive the boundaries of the Board's role, could benefit from such an orientation. The Office of the Attorney General may be best positioned to develop this orientation to statutes, particularly if it develops a presentation more nuanced than a list of statutes and its 2003 informal opinion.

NASBE offers orientation possibilities, as does a formal mentoring practice for new board members.

All the states we contacted provide some form of orientation for incoming state board members to prepare them for their duties. These orientations may be in the form of sending board members to a three-day NASBE orientation, having department staff and the state board director provide orientation, or having current state board members mentor new board members. In some states, the governor's office sponsors orientations covering state government and board service that are required for incoming board members.

In Wyoming, the Department of Education's liaison prepares an orientation manual for Board members, and along with the Board chairman, conducts orientation at the new members' first meetings. But Department officials acknowledged that some of the manual's contents are dated and not consistent with practice. Further, the Board has not developed strategic plans in the manner required of executive branch agencies, with measurable objectives.

Orienting Superintendent candidates about the scope and authority of the position is also an option.

Orienting candidates for the office of Superintendent about the statutory scope and authority of the position is a more difficult proposition. Some of those with whom we spoke suggested that the political parties may be the appropriate entities to undertake that sort of communication about the distribution of statutory authorities. However, even with such a primer, candidates for Superintendent may not acknowledge in their campaigns those key issues that, practically speaking, at the most, they share with the State Board.

Enhancing Board resources would allow it to secure more information

The Board's inability to get information necessary to develop policy options other than through the Department is a key source of contention in the relationship. A solution would be for the Board to have a staff person to perform the duties it requests. Further, whether full- or part-time, this should be a policy analyst position rather than an administrative assistant so that the Board would have the ability to obtain some independent research on policy issues. NASBE says that boards need staff that will gather

A dedicated policy analyst would help the Board to better fulfill its open-ended responsibilities.

information, analyze it, provide alternatives, and make recommendations. Having an analyst would also enable the Board to better fulfill those open-ended statutory responsibilities such as establishing statewide goals for Wyoming public education, and initiating or facilitating discussions about improving education in the state. Under the existing arrangement, we sensed Department impatience with assisting the Board in those endeavors that do not directly relate to action items.

Even with such an analyst, the Board would still rely upon the Department for comprehensive expertise on issues.

Most of those we interviewed, including present and past board members and Department officials, believed that having a staff person empowered to get information from the Department, and possibly outside as well, would be a benefit. The Department currently provides administrative assistance to the Board in arranging meetings and other such logistical tasks. Under the former Superintendent, the position was dedicated full-time to this work, although the practice generally is to have a staff member from the Superintendent's Office provide this assistance part-time.

Among other states with Wyoming's model, most have an executive officer for their boards.

Even if the Board were to have an analyst position, the state's comprehensive expertise in educational issues would still reside in the Department, under the supervision of the Superintendent. Further, a one-person staff would not suffice for all the work the Department does in accrediting schools, drafting rules, implementing a statewide assessment, and the other duties statute assigns to the Board. Thus, the need for cooperation and assistance from the Department and Superintendent would continue.

The most common staffing arrangement among the other states sharing Wyoming's governance model is to have an executive director or executive officer and support staff for the Board. Only North Dakota is similar to Wyoming in appointing a department liaison to staff the board. However, that state's board has an extremely limited sphere of influence and authority compared the Wyoming State Board's wide range of responsibilities.

Increasing resources could enable the Board to better represent their districts in state-level governance

The Governor appoints seven of the Board members from the appointment districts in Figure 4.1. Both past and current

Reimbursement has been for only meeting-related and out-of-state travel.

members we interviewed spoke of the need to maintain contact with school boards, administrators, and citizens to learn how state-level policies actually affect the local school districts, and to relay their concerns. Further, Board members want to attend other educational meetings and forums throughout the state, specifically including meetings of the Legislature's Joint Education Committee. Reimbursement for the costs of travel in these large appointment districts would facilitate this model of board involvement. To date, State Board funding has traditionally covered only the travel costs generated by attendance at Board meetings, and in the last few years, included additional funds for some members to travel to NASBE conferences. Thus, the Board may need additional resources to develop this representative role more fully.

Different boards make varying commitments to this outreach role.

However, the Board's role in representing local districts is not universally perceived. Some say Board members do not usually bring forth input from the local districts, and districts communicate directly with the Department and Superintendent. Most agree that the State Board is much lower profile than the Superintendent, and that different boards make varying commitments to this outreach role.

Figure 4.1

State Board Appointment Districts

District	Counties
1	Laramie, Goshen, Platte
2	Albany, Carbon, Sweetwater
3	Lincoln, Sublette, Teton, Uinta
4	Campbell, Johnson, Sheridan
5	Big Horn, Hot Springs, Park, Washakie
6	Crook, Niobrara, Weston
7	Natrona, Fremont, Converse

Source: W.S. 9-1-218(b)

A Superintendent vote on the Board could help to balance authority with accountability

We found that the Superintendent has considerable influence on Board operations and decisions even though, by law, the position

The Superintendent perspective is that the elected official's position should prevail.

has non-voting status on the Board. Nonetheless, the Superintendent perspective is that the elected official's position should prevail, because of its implied accountability to the citizens. Superintendents' positions on the boards in other states with Wyoming's model vary, with some having no vote and no power to override the board, to one where the superintendent is the board chairman and by virtue of setting the board's agenda, exerts some control over its decision-making.

A vote would give the Superintendent formal as well as informal influence on Board decisions.

As noted earlier, in 1994 the Legislature deliberately removed the Superintendent's authority to decide controversies arising from the administration of the state school system involving rules or directives promulgated by the Superintendent, Department, or State Board. According to the Attorney General, the State Board has clear authority to set policy, and many interpret that as the authority to make final decisions that should not be undermined by the Superintendent (such as the Body of Evidence issue discussed earlier). By giving the Superintendent a vote on the Board, the Legislature could give that position some formal authority as well as the informal but forceful influence the position currently holds.

The Legislature could make the State Board an advisory body

With the Legislature's heavy involvement, there may be little policymaking left for the Board.

A source of contention in the current arrangement is that the Board is charged with making policies and implementing key tasks that it has no way to accomplish other than through the Department. According to a NASBE official, a problem that state boards face in the accountability reform era is that they are required to implement policies, but have had little input into the legislation passed by legislatures. With the heavy involvement of the Wyoming Legislature, through the Joint Education Committee (JEC), there may be little policy left for the State Board to develop, other than over the implementation of policies essentially developed in legislation. However, in statute, the Superintendent has authority over the implementation agency, thus creating the potential for tension.

The public comment

If the Board were to have an advisory role over policy implementation, outside input on these decisions would continue

***aspect of rulemaking
may suffice for
public input.***

to come through the public comment requirement of the rule promulgation process. As for the standards, these have traditionally been developed in an inclusive process involving stakeholders from throughout the state. Similarly, the Legislature has set up statewide task forces to develop the statewide student assessment.

***The Board could
focus upon purposes
rather than means of
educational
improvement.***

In this scenario, the Board might focus more on its role of initiating and facilitating discussion regarding the need and means for improving education, and upon establishing statewide goals for Wyoming public education. It could focus more upon the purposes of standards, assessments, teacher performance evaluation systems, and other elements of the educational system, rather than the means. Board members have also said that developing a relationship with the Legislature and the JEC so that the Board has more involvement at the policy-development level is a goal.

The Board has important adjudicatory duties relating to private school licensing, charter school appeals, and approving or rejecting alternative school district schedules and proposals to form boards of cooperative educational services. Any changes to the Board's authority must make provisions for how these duties will be accomplished.

Alternatively, the Legislature could focus the State Board on its decision-making responsibilities

***The Legislature
could repeal the
Board's more
philosophical
assignments.***

Statutes give the State Board responsibility for comprehensive discussion and policy making that may be occurring to a large degree at the legislative level. If so, the Legislature could modify Board statutes so that they are more focused on those items in which the Board has a role in making decisions critical to the system's functioning, such as accreditation and standards, and acting in an adjudicatory manner to make the determinations discussed above. Focusing the Board in this way may alleviate some of the tension with the Superintendent and Department, which may not share the Board's interest in pursuing its more open-ended and philosophical tasks.

The Legislature could maintain the current

arrangement

However, the issue of how the Board will “implement” would continue to create discord at times.

In roughly the last two decades, the Legislature has passed two major overhauls of the Superintendent and State Board statutes, and made changes to both schemes to reflect school reform requirements. Most with whom we talked agreed with the Attorney General that the assignment of authorities now is clear, but contention arises with how the Board will prepare itself to make its decisions, and then carry them out. The Legislature has continued to assign the Board implementation roles when there is no practical way for it to implement anything without the Department, which is controlled by the Superintendent. The Legislature has woven an intricate web of interdependence that is not always clear or comfortable for either.

This intricate web of interdependence may not be altogether bad.

Indeed, some lack of clarity in a governance structure may not be altogether bad. This point of view was eloquently expressed by a former Wyoming Superintendent who testified in opposition to a restructuring proposal floated during reorganization of state government. She stated that despite various shortcomings and problems, Wyoming’s system “works effectively,” and went on to add:

“There are admitted ambiguities within the education governance system. Some students of government assert that they are inadvertent; others, that a complex system must have room for overlapping jurisdictions, duplication of duties, and even the absence, in some cases, of explicit delineation of responsibilities. Nevertheless, over time, the members of the system have accommodated one another in a manner that allows the system, though not monolithic, to work effectively.”

Thus, if it sees the occasional tension as a healthy indication of a good system of checks and balances, the Legislature could make no changes, and leave the responsibility for making the current system work with those who are directly involved. According to many we interviewed, the system has worked well before, although it took dedicated effort and leadership on the part of the participants.

Decisions on options come down to deciding whether and how to benefit from a lay board at the state level

How best can a lay board's involvement improve public education?

It has been suggested that, in the past, the Legislature has switched authorities around depending upon whether the State Board or the Superintendent was in or out of political favor at the time. However it proceeds, if at all, in recommending or undertaking action to lessen the tension in the State Board/Superintendent relationship, the Legislature needs to make decisions based upon whether it wants the involvement of a lay board with the benefits described on page 26, and if so, how best to use it to improve public education.

AGENCY RESPONSE

State-Level Education Governance



Wyoming Department of Education

Dr. Jim McBride, Superintendent of Public Instruction
Hathaway Building, 2nd Floor, 2300 Capitol Avenue
Cheyenne, WY 82002-0050
Phone 307-777-7673 Fax 307-777-6234 Website www.k12.wy.us

November 21, 2005

LEGISLATIVE SERVICE OFFICE

NOV 23 2005

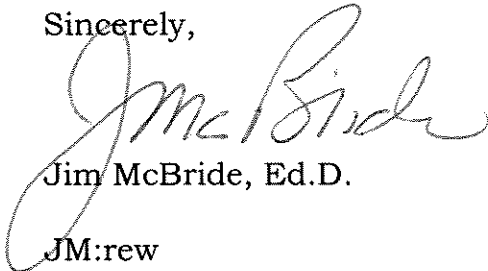
Ms. Barbara J. Rogers
Program Evaluation Manager
Wyoming Legislative Service Office
213 State Capitol
Cheyenne, Wyoming 82002

Dear Ms. Rogers:

I appreciate your work on the evaluation of State-Level Education Governance. A specific response is attached.

I look forward to our meeting with the Management Audit Committee on December 14, 2005.

Sincerely,



Jim McBride, Ed.D.

JM:rew

Attachment

cc: Duane Edmonds, Chairman
State Board of Education

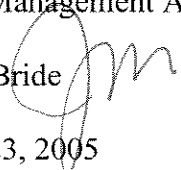


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MEMORANDUM

TO: Representative Randall Luthi
Chairman, Management Audit Committee

FROM: Dr. Jim McBride 

DATE: November 23, 2005

SUBJECT: Management Audit Response

On behalf of the Wyoming Department of Education, I would like to thank Barbara Rogers and her staff for providing an informative analysis of our state's K-12 governance structure. The historical perspective was helpful to me, and I am sure will be helpful to those who follow me as State Superintendent of Public Instruction. An open and honest discussion of the report's findings can only improve the relationship between the State Board of Education and the Wyoming Department of Education.

In general, the document references frictions and tensions from previous administrations. While I do not expect that my administration will be free of friction and tension, I do believe that we are establishing a new era of cooperation and communication. It is my opinion that in the administration prior to mine, these tensions were largely driven by personalities. Our goal (the current WDE administration) is to work hand in hand with the State Board, and to establish policies and procedures that best serve education in Wyoming.

We will provide a detailed analysis and response to the report, but would like to emphasize this bottom line message: The rules and responsibilities of both the State Superintendent and the State Board should be clearly delineated. We believe that this can be done internal to the two organizations in a professional, cooperative atmosphere. The Wyoming Department of Education respectfully recommends that we be given the opportunity to resolve these differences, and to provide a joint recommendation to the Legislature in a year's time.

The report notes that "the Legislature established a system based on shared and separate authority," and we concur. We would expand on that by noting such a system requires mutual respect, and an understanding of the roles and responsibilities of the other.

As State Superintendent of Public Instruction, I am keenly aware of my statutory mandate to “assist the state board in the performance of its duties and responsibilities, including providing information to the board upon request.” The Committee should be advised that I have eliminated the requirement of the Blankenship administration that all communication from the State Board be directed to a single individual. I have personally communicated to the Board that they are free at any time to communicate with any staff member of the WDE.

Page eight of the report discusses the most recent friction between the Board and the Superintendent, noting that “Some held this to be a failing of cooperation between individuals, while others saw it as a governance or structural problem.” I am one of those who believe the friction began with a personality problem. The legislatively designed governance structure does indeed depend on cooperation. When that cooperation does not exist, it is easy to point out “structural” deficiencies. Some improvements may be needed, but I am of the opinion that, though somewhat delicate, the structure is sound.

Before addressing the recommendations of the report, I would like to offer some general observations on the report.

Chapter 2

In Chapter 2, the report notes that fundamental tension exists in state-level education governance. I believe that a certain amount of tension can be healthy, can result in a more complete public discussion, and is a valuable part of the governance structure. The goal is to assure that the tension is not compounded by confusion over appropriate roles. I would emphasize the view shared on page 16, that “there should be a clear differentiation between advisory roles and responsibility for leadership and implementation of education policy.

Chapter 2 further discusses the issue of accountability. The Superintendent of Public Instruction is unquestionably accountable to our citizens for the state’s education system. It is a shared responsibility. I believe the Superintendent should be held accountable for a relationship with the Board. While Board decisions involve critical issues such as graduation requirements and assessment, the Superintendent should work to assure that these decisions are made in a cooperative and collegial environment.

The report raises important concerns over the role of “implementation” which while assigned to the Board, cannot be carried out without the use of WDE resources. This issue is key to resolving potentially unhealthy tensions, and merits continuing discussion.

The 1994 legislative effort to clarify duties of the State Board and State Superintendent is discussed on page 22. It is important to note that this legislation was the result of a cooperative effort between the Board and WDE. Over the past decade many more responsibilities have been assigned to both the Board and the Superintendent. Federal education law has changed dramatically. An effort similar to the 1994 review would be appropriate.

Recent academic reform requirements have been placed with the State Board, and I agree with the report's conclusions that this placement is logical. I am among those who see shared authority as a benefit to the state's education system.

Chapter 3

The experience of other states in governance issues can be instructive. I am not surprised to read of similar tensions in other states. I believe such tensions are inherent in any democratic system.

We ask that the Legislature be mindful of situations in other states that actually contribute to tension. We are aware of serious difficulties in other states between Governors and Chief State School Officers; between Chiefs and State Boards. In these instances, we have heard stories of paralysis. Whatever change may come in Wyoming's governance, we ask that careful consideration be given to improving our system.

We would include one element of the state's education governance that has not been addressed by the report. The Wyoming Education Planning and Coordination Council, established by W.S. 21-16-601, was created to coordinate education policy, kindergarten through college. Among its responsibilities, this Council shall identify goals for education in Wyoming. We were reminded of this organization after receiving the revised LSO report, and did not have an opportunity to review this with staff. If the Legislature is interested in comprehensive governance reform, this Council should likely be considered.

The report does not discuss changing the means by which either the Superintendent or member of the Board serve the education system. I want to be quite clear in advocating for the current system. An elected State Superintendent and an appointed State Board of Education should be retained.

Chapter 4

The report finds, on page 35, that "Our research did not indicate that the current structure creates consequences compelling enough to make radical changes, such as abolishing the State Board or changing the Constitution so that the Superintendent is no longer a statewide elected official."

Agree. We believe that the current structure may need some legislative clarification. It does not require dramatic change.

Recommendation: Independent orientations could better communicate the roles of the two.

Agency response: Agree.

The Board and WDE should agree on a proper and complete orientation for new Board members. The most recent effort was not sufficient. A new member orientation would likely include presentations from the Office of the Attorney General, WDE, and NASBE. An orientation agenda should be developed, and materials prepared in anticipation of new appointments.

WDE employees should be trained on the roles and responsibilities of the State Board. This training agenda should be prepared in cooperation with the State Board. It would be appropriate for State Board members to participate in this training, along with the Office of Attorney General.

WDE and State Board should provide an opportunity for candidates to be briefed on the respective roles of the Department and the Board.

Recommendation: Enhancing Board resources would allow it to secure more information.

Agency response: Partially agree.

The first part of this recommendation relates to the addition of a policy analyst. Before any action is taken to provide this resource, we would appreciate defining the role and responsibility of this position. We appreciate the desire for independent policy information, but note the wealth of resources available through NASBE. WDE supports the Board's effort to receive independent information related to education policy, but would like the opportunity to work with the Board to define how this can be accomplished.

WDE currently provides full administrative support. Further, we support Board activities with several WDE professional staff members. The provision of a Board employed policy analyst would be expected to lighten the support role of WDE staff.

The report documents an instance in which the previous administration blocked Board efforts related to the Body of Evidence. We note that the addition of staff for the Board would not have made a difference in that instance.

Recommendation: Increasing resources could enable the Board to better represent its districts in state-level governance.

Agency response: Agree.

Certain issues relating to Board activities should be reviewed to assure they are consistent with other citizen boards and commissions in the state. We believe legislative authorization is required.

WDE believes the Board should adopt a travel policy to guide travel both in and outside of the state. We are in the process of researching how this is handled by other boards and commissions in Wyoming. We have received information on how other states deal with travel expenses for board members. It is our plan to present this information to the Board during the February meeting.

Recommendation: A Superintendent vote on the Board could help to balance authority with accountability.

Agency response: Agree.

This is not something I have personally advocated, but on review see that this could strengthen the Superintendent's formal role with the Board. An actual vote may have the added benefit of impressing a new Superintendent with responsibilities on the Board.

Recommendation: The Legislature could make the State Board an advisory body.

Agency response: Partially agree.

I am increasingly struck by the reality of the Board "implementing" when the resources are entirely within the control of the Superintendent. This is further complicated when one considers the extent to which state law dictates WDE activities. Since 1997 the Legislature has made many important decisions related to education policy. It has defined the "basket of goods," outlined the form and nature of the state assessment, and directed the availability of vocational education programs. I strongly support these efforts, and commend the legislative effort.

As the report has noted, there are a number of factors at play in the implementation of state law and education policy. Federal law, entirely outside the control of the Board, prescribes certain activities in school improvement and assessment. School finance litigation has pushed the Legislature to be more prescriptive.

Any effort to make the State Board advisory should be focused on strengthening and enhancing the Board's role in developing policy. The report's suggestion that "It could focus more upon the purposes of standards, assessments, teacher performance evaluation systems, and other elements of the education system. . ." is important.

This should be further explored, in a cooperative effort between the Board and WDE.

Recommendation: Alternatively, the Legislature could focus the State Board on its decision-making responsibilities.

Agency response: Partially agree.

I do not view this recommendation as exclusive of the previous recommendation. The Board has played a critical role in making decisions about accreditation and standards. My review of this past activity leads me to believe that this role should continue as an important check on the regulatory activities of WDE.

My impression is that the Board has directed WDE process in both the accreditation and standards efforts. I can not emphasize how important I believe this has been to the success of the work.

I would also emphasize that the issues of standards, assessments, teacher performance, and accreditation are at the very heart of our education system. These are the very issues in which a healthy tension should exist, and would best serve the public good.

Recommendation: The Legislature could maintain the current arrangement.

Agency response: Agree.

I became State Superintendent just as this LSO review was in the early stages. I disagree with my predecessor on the need for substantial changes. I would appreciate an opportunity to work with the Board to revive a productive relationship. If anything, we should be jointly tasked to review our relationship in light of this report, and changing legislative mandates. In 1994, a similar effort resulted in meaningful changes to the law. It should be expected that 15 years later a review process would be repeated.

Conclusion

In conclusion, I look forward to addressing these issues further with the Management Audit Committee. I look forward to an expanded discussion with the State Board. We share a commitment to improve opportunities for young people in our state. We share a commitment to improving our schools. With these common goals, I am confident we can work together. It is my hope that the Legislature will give us that opportunity.



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Evanston

SANDRA BARTON
Riverton

JAMES LOWHAM
Casper

DANA MANN-
TAVEGIA
Osage

JEFF MARSH
Torrington

LARRY MCGARVIN
Ten Sleep

JAN TORRES
Rock Springs

JIM MCBRIDE, ED.D.
State Superintendent

MARY KAY HILL
Board Liaison

JENNIFER DUNCAN
Executive Assistant

Representative Randall Luthi
Chairman, Management Audit Committee

Subject: LSO Report on State-Level Education Governance

Dear Representative Luthi;

The State Board of Education has reviewed the subject report and wants to compliment the Legislative Service Office for their excellent work. We find the report to be an accurate representation of the relationship between the State Board of Education, The Wyoming Department of Education and the Wyoming Legislature. The history of educational governance in Wyoming was very interesting to all Board members.

The Board believes that the statutes and the Attorney General's recent opinion make the role of the State Board of Education very clear in setting policy and that this statutory authority was strategically granted by the Legislature with proper intent.

The report describes the tension that existed with the previous Wyoming State Superintendent of Public Instruction. This tension was primarily the result of the Board not being able to make contact with members of the State Department of Education. All contact had to be through one person so it was not possible to ask a question and get a quick response. Another situation that led to tension was the Superintendent's decision to minimize support for the Body of Evidence (BOE) that is a statutory responsibility of the State Board of Education. Ultimately, by researching legislation and budget footnotes with the help of Department personnel, the Board discovered that funding had been allocated for BOE technical assistance to schools and the issue was resolved with continued support to the School Districts.

Superintendent McBride has opened the lines of communication so this source of tension does not exist today. The State Department provides support for analytical and administrative services. The State Department has professional educators that are highly qualified in their field and are extremely dedicated to quality education.

The report has a lot of reference to "Accountability" and it implies that the Superintendent is the only person publicly accountable. This is not true, all SBE members feel accountable to the School Districts in Counties they represent and to the citizens of Wyoming.

The Board offers the following comments on the options contained in Chapter 4 of this report.

INDEPENDENT ORIENTATIONS COULD BETTER COMMUNICATE THE ROLES OF THE TWO (Pages 35 & 36)

Board position: **AGREE**

The State Board currently conducts an orientation with new members. However, as the report stated, the orientation charts need to be updated to reflect current responsibilities and working relationships. The orientation is normally two hours and precedes the first Board meeting that the member attends. Having someone from the Attorney General's Office conducting or assisting in the orientation would be very helpful since a major portion is with regard to statute responsibilities. The orientation should be expanded from two hours to four hours.

ENHANCING BOARD RESOURCES WOULD ALLOW IT TO SECURE MORE INFORMATION (Pages 36 & 37)

Board position: **AGREE**

The report suggests that the Board have a staff person, separate and independent of the Superintendent and the Department, to perform the duties it requests as the Legislature directed in 1990. The Board discusses many things in their meetings that would require research that they do not have resources to do the research. In particular, some state boards have changed their curriculum to include 4 years of mathematics, 4 years of science, and 4 years of English. There is at least one school district in Wyoming that has this 4-4-4 curriculum. It has been stated by board members from other states that student achievement is higher when more math and science are required. If we had a policy analyst that could do research in areas such as this we would be in a better position to modify the "Basket of Goods". There are many other areas that could be researched as well. These could include developing a survey for students who drop out of school in order to identify their reason for dropping out and to find out what the school would need to do to get them to re-enroll. Montana currently does exit interviews.

If we were to be provided the resources, the analyst should probably be within the Department to minimize coordination with other Department personnel. We do not have a recommendation regarding whether the position should be full-time or half time.

INCREASING RESOURCES COULD ENABLE THE BOARD TO BETTER REPRESENT THEIR DISTRICTS IN STATE-LEVEL GOVERNANCE (Page 38)

Board Position: **AGREE**

Board members normally attend school board meetings in their Appointment Districts at their own expense. In some of these districts the school districts are more than 100 miles from the Board member's home. For this reason, Board members do not attend as many School Board Meetings or Community Meetings as would be desirable. We have had many discussions about the need for us to have more visibility with school boards, legislative committees and state government agencies. Under the current rules for travel it is not clear that the Auditors would approve per diem for travel to meetings other than scheduled Board meetings.

Board members have been attending meeting if they are held in their community. We have had attendance at JEC, Recalibration, School Facilities, School Improvement and Assessment

meetings during the past year. We would not ask for more than one or two members to attend meetings that are not scheduled Board meetings but we believe that we would have more visibility and be better informed if we had the resources to attend such meetings.

A SUPERINTENDENT VOTE ON THE BOARD COULD HELP TO BALANCE AUTHORITY WITH ACCOUNTABILITY (Page 39)

Board position: **DISAGREE**

The Board believes that the State Superintendent should continue to serve on the Board as an Ex-Officio member. The State Superintendent was a voting member of the Board prior to 1994. None of the current Board members were on the Board at that time. The report states that the Legislature deliberately removed the Superintendent's authority to decide controversies arising from the administration of the state school system involving rules or directive promulgated by the Superintendent, Department, or State Board. The Superintendent is a vital resource to the Board. The previous Superintendent did not attend all Board meetings and we believe that it is essential that they be in attendance. We believe that Superintendent McBride will make every effort to attend Board meetings.

THE LEGISLATURE COULD MAKE THE STATE BOARD AN ADVISORY BODY (Pages 39 & 40)

Board position: **DISAGREE**

We believe that the current responsibilities of the Board should continue. The State Board and Superintendent should agree on directions for Wyoming education, and then work together to implement those by pursuing legislation or working with districts. Being an Advisory Board takes away all power to make change and have an impact on Wyoming education.

If the Board were to have an advisory role over policy implementation, outside input would need to be obtained from school districts, communities and government agencies. However, it is possible that we could place more emphasis on updates to standards, teacher evaluation systems and assessment. If our role was to be changed there are some current duties that would need to be assigned to other agencies. These include Private School Licensing, Charter School Appeals, and School District Alternative Schedules as well as proposals from Boards of Cooperative Education.

ALTERNATIVELY, THE LEGISLATURE COULD FOCUS THE STATE BOARD ON ITS DECISION-MAKING RESPONSIBILITIES (Pages 40 & 41)

Board position: **DISAGREE**

The current arrangement has been effective. We need to work through some improvements, but basically the system is not broken and therefore does not need fixing. The Board needs to develop a strategic plan. A strategic plan will allow the board to look at their current duties, think about changes that may occur in education and recommend changes to statutes as necessary. The Board is an appropriate body to adjudicate or decide certain education issues such as: Private School Licensing, Charter School Appeals, School Accreditation and perhaps even Teacher Licensing should return to the Board.

THE LEGISLATURE COULD MAINTAIN THE CURRENT ARRANGEMENT
(Pages 41 & 42)


Board position: **AGREE**

The current arrangement has working, gives local citizens more power through communication with their local State Board members. We do not anticipate that we will experience the tension and confrontational situations that existed with the previous Superintendent. When we have areas that need to be clarified we have been able to work with Department personnel. The Board and Department have and can continue to work effectively for what is best for education in Wyoming. We do believe that we have a needed check and balance role in educational governance.

We believe that the system has worked well in the past and will continue to provide Wyoming with the best educational system in the nation.

We want to thank the Legislative Service Office for the opportunity to comment on this report. We especially want to thank Barbara Rogers, Kelley Pelissier and Karla Smith for their professionalism in conducting the interviews and reviews.

Wyoming State Board of Education


Duane Edmonds, Chairman

APPENDICES

State-Level Education Governance

APPENDIX A

Research methodology

Summary of Methodologies

This evaluation was conducted according to statutory requirements and professional standards and methods for governmental audits. The research was conducted from June 2005 through November 2005.

In keeping with audit standards issued by the U.S. Government Accountability Office (2003), LSO is compelled to disclose any personal impairments its auditors may have “that could affect their impartiality or the appearance of impartiality.” (Standard 3.07) Prior to employment at LSO, the Program Evaluation Manager was appointed to and served as a member of the State Board of Education from 1979 to 1985. However, in the 20 years since that term was completed, this individual has not participated in education management, decision-making, or policy development and has not been involved in legislative committee work, staffing, or drafting statutory changes that affected Board or Superintendent duties. At the outset of this project, the State Board of Education and Superintendent of Public Instruction were informed of this individual’s prior service; they raised no objections, so the individual continued to serve as manager during the project.

General Methodology

To compile basic information about state-level education governance, we reviewed relevant statutes, session laws, budgets, rules, professional literature, legislative history, legal opinions and memos, previous studies and reports, Board minutes, information from other states, and other relevant information. To gain further understanding, we interviewed a number of current and former superintendents and state board members, officials from other agencies, and other states’ education officials and personnel.

WDE-produced documents

At our request, the Wyoming Department of Education provided documents for our examination including: policy manuals; rules and regulations; Wyoming body of evidence assessment system excerpts; training and orientation materials; State Board meeting agendas and minutes; Board rosters; Board testimony; organizational structure materials; selected correspondence and memos; and other relevant documents.

APPENDIX B

NASBE and ECS State Models of Governance

State Education Governance Models (2005)

Model I
Governor appoints state board, board appoints chief state school officer
12 states
Alaska
Arkansas
Connecticut
Florida
Illinois
Kentucky
Maryland
Massachusetts
Missouri
Rhode Island
Vermont
West Virginia

Model II
Elected state board, board appoints chief state school officer
8 states
Alabama
Colorado
Hawaii
Kansas
Michigan
Nebraska
Nevada
Utah
Also, Northern Marianas

Model III
Governor appoints state board, independently elected chief state school officer
11 states
Arizona
California
Georgia
Idaho
Indiana
Montana
North Carolina
North Dakota
Oklahoma
Oregon
Wyoming

Model IV
Governor appoints state board and chief state school officer
9 states
Delaware
Iowa
Maine
New Hampshire
New Jersey
Pennsylvania
South Dakota
Tennessee
Virginia
Also, Puerto Rico

Other Models

- Mix of appointed/elected state board members:** Louisiana (board appoints chief); Ohio (board appoints chief); DC (board appoints chief); Guam (gov. appoints chief)
- Legislature appoints board:** New York (board appoints chief); South Carolina (chief elected)
- Mixed appointment of board (gov., lt. gov., speaker of the house):** Mississippi (board appoints chief)
- Elected board, governor appoints chief:** Texas, New Mexico
- Local boards elect state board, chief elected:** Washington
- No state board:** Minnesota (gov. appoints chief); Wisconsin (chief elected)

Chief State School Officer Selection Method
Board appoints: 24
(also DC, Northern Marianas)
Governor appoints: 12
(also Guam, Puerto Rico)
Elected: 14



Models of State Education Governance

Compiled by Todd Ziebarth

April 2004

Model One

Within this model, the governor appoints the state board of education. Also, the state board of education appoints the chief state school officer. There are 10 Model One states: Arkansas, Connecticut, Florida, Illinois, Kentucky, Maryland, Missouri, New Hampshire, Vermont and West Virginia.

Model Two

Within this model, the state board of education is elected, and appoints the chief state school officer. There are eight Model Two states: Alabama, Colorado, Hawaii, Kansas, Michigan, Nebraska, Nevada and Utah.

Model Three

Within this model, the governor appoints the state board of education. Also, the chief state school officer is elected. There are 10 Model Three states: Arizona, California, Georgia, Idaho, Indiana, Montana, North Dakota, Oklahoma, Oregon and Wyoming. In three of these states, Arizona, Indiana and Oklahoma, the chief state school officer is also a voting member of the state board of education.

Model Four

Within this model, the governor appoints the state board of education and the chief state school officer. There are eight Model Four states: Alaska, Delaware, Iowa, Maine, New Jersey, South Dakota, Tennessee and Virginia.

Other Models

In addition, 14 states do not conform to any of the four models. They are:

- Louisiana: Eight state board members are elected, and the governor appoints three members. The state board appoints the chief state school officer.
- Massachusetts: Seven state board members are appointed by the governor, one member is appointed by the student advisory council and one member is appointed by the higher education coordinating council. The state board appoints the chief state school officer.
- Minnesota: There is no state board, and the governor appoints the chief state school officer.
- Mississippi: The governor appoints five state board members, while the lieutenant governor and speaker of the house each appoint two members. The state board appoints the chief state school officer.
- New Mexico: The state board is elected, and the governor appoints the chief state school officer.

- New York: The state legislature appoints the state board, and the state board appoints the chief state school officer.
- North Carolina: Two state board members are elected, and the governor appoints 11 members. The chief state school officer is elected.
- Ohio: Eleven state board members are elected, and the governor appoints eight members, with the advice and consent of the senate. The state board appoints the chief state school officer.
- Pennsylvania: Four state board members are elected, and the governor appoints 17 members. The governor appoints the chief state school officer.
- Rhode Island: Two state board members are elected, and the governor appoints nine members. The state board appoints the chief state school officer.
- South Carolina: The state legislature appoints 16 state board of education members, and the governor appoints one state board member. The chief state school officer is elected.
- Texas: The state board is elected, and the governor appoints the chief state school officer.
- Washington: Nine state board members are elected by their local school boards, one member is elected by the governing boards of state-approved K-12 private schools and votes only on matters pertaining to private schools and one member, the chief state school officer, is elected by the general public.
- Wisconsin: There is no state board of education, and the chief state school officer is elected.

Todd Ziebarth, policy analyst at Augenblick, Palaich and Associates, compiled this ECS StateNote for the ECS National Center on Governing America's Schools, with funding from the Joyce Foundation.

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