
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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