

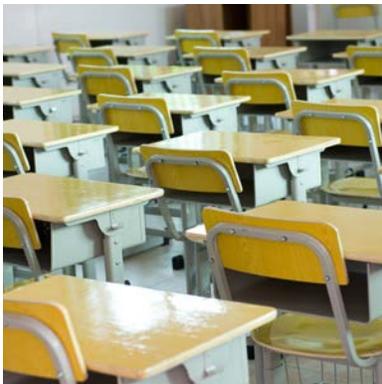
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# Research Report

Report Number 737, February 2016

## Who Is in Charge of Utah's Schools?

A Look at Education Governance in Utah



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# Who Is in Charge of Utah's Schools?

## A Look at Education Governance in Utah

In 2014, the nomination process for the Utah State Board of Education was challenged and ruled unconstitutional. The ruling demanded that Utah come up with a better solution. During the 2015 General Session, several suggestions were proposed but none were passed. Additional suggestions have also been proposed during the 2016 General Session.

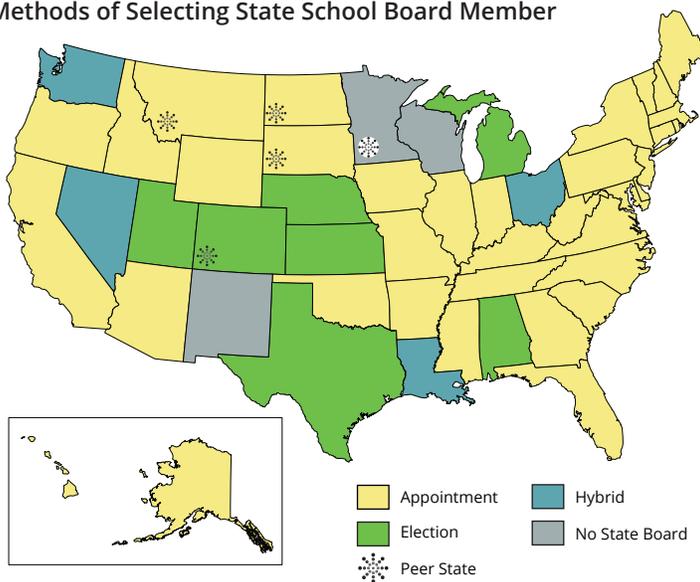
Spurred by the need for changes in the selection process of the State Board, Utah Foundation wanted to explore how education governance works. Additionally, Utah Foundation conducted a survey of local and state level education officials, asking questions about who currently is responsible for various responsibilities, and who should be.

This report examines education governance through two lenses. One, through the lens of potential approaches to solving the State Board selection process, and the other through the interconnected network of state and local players. The report concludes with a question: should the responsibilities in Utah's public education system stay as they are, or is now an opportune time to examine how those responsibilities are distributed?

### KEY FINDINGS:

- A Utah Foundation survey of education officials at the state and local levels indicated a desire for more local control regarding revenue generation, resource allocation, training and professional development, testing and assessment, and standards (see pages 5-7).
- In the 2015 General Session, Utah passed the second highest number of bills in the nation relating to education (see page 4).
- While elected boards might provide more accountability and responsiveness to voters, appointed boards might provide stability and are better suited to technical and financial decisions (see pages 11).
- Utah's state board election process is unique to seven states. Thirty-six states have appointed state boards, while four others have a mix of appointed and elected state board members (see page 10).

Methods of Selecting State School Board Member



Source: National Association of State School Boards of Education, recreated by Utah Foundation.

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## INTRODUCTION

Utah has the largest proportion of its population under the age of 18 in the nation. Not surprisingly, the largest item in Utah's annual budget is education, and the Governor's 2017 budget directs 70% of new revenue to education. This, along with the vital nature of education services in shaping the lives of children, makes education a pressing issue statewide. Because public education is operated by local districts and funded by a combination of state and local revenues, a web of connected state and local entities take part in making education work.

At the state level, recent developments have impacted the selection process for the State Board of Education. In 2014, U.S. District Court Judge Clark Waddoups ruled the nominating committees that place State Board candidates on ballots were unconstitutional. As part of his ruling, Judge Waddoups gave the state time to create a new system before issuing his final order.<sup>1</sup> The state responded in the 2015 legislative session through the introduction of multiple bills and joint resolutions. However, a final resolution is yet to be reached.

The ruling is forcing Utah to examine the nominating committee process, but also creates an opportunity to examine K-12 education as a whole. To gain insight into the existing statewide governance structure for public K-12 institutions, Utah Foundation conducted a survey of education officials and administrators. This report addresses some of the issues created through the existing statewide governance structure, and provides resources for potentially solving the issues at hand. Additionally, this report takes a brief look at how other states select their state boards, what works, and considerations for decision makers moving forward.

## LANDSCAPE OF UTAH'S EDUCATIONAL LEADERSHIP

In 2015, over 600,000 students attended classes in over 1,000 public schools in Utah. These schools are overseen by 41 public districts, led by 1,700 local administrators, and 27,000 teachers.<sup>2</sup> The number of students is projected to continue to grow and become more diverse in the future.<sup>3</sup> What does it take to keep the system running, and who do the citizens entrust with this responsibility? In addition to local leaders, there are numerous policy makers and administrators at the state level. This section outlines the responsibilities, powers, and interaction between these "key players" at the state and local levels. The responsibilities fall into three tiers: high-level advisory, state-level policy decisions and guidance, and on-the-ground implementation and practice. Figure 1 maps out these interactions.

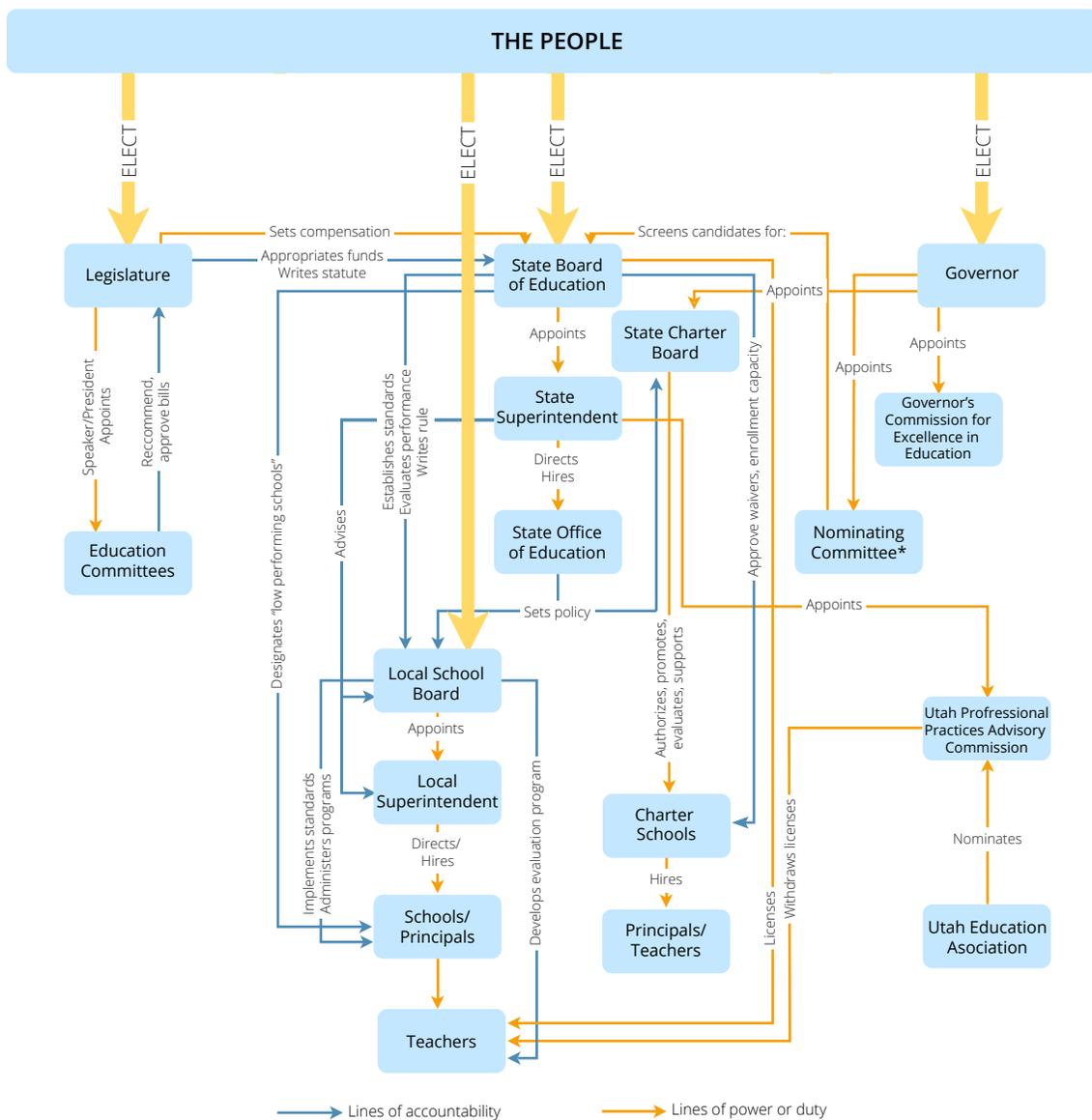
### High-Level Advisory

The Utah Governor's role is high-level advisory. The governor is responsible for drafting a recommended budget, creating commissions, appointing individuals to education commissions or councils, and establishing statewide goals for the entire education system. The annual budget proposal is commonly altered by the Utah State Legislature before approval. In previous elections, the governor had the power to appoint the State Board Nominating and Recruiting Committee. However, due to the Waddoups ruling, Governor Herbert did not appoint a committee for 2016.<sup>4</sup> As a result, there are expected to be many State Board candidates on ballots across the state.

### State-Level Policy Decisions and Guidance

State-level policy decisions and guidance are in the hands of the Utah State Legislature and the State Board. The Legislature usually takes the lead regarding setting policy and approval of the state budget, while the State Board establishes rules and sets the “core framework” of the system which includes core competency standards and their assessment.<sup>5</sup> Additionally, the State Board is responsible for licensing educators and administrators, a requirement for employment in public K-12 schools. The State Board has the power to revoke funding for schools that do not follow the standards and requirements it sets.

Figure 1: Utah's Education System, Accountability, Powers, and Duties



\*Nominating Committee has not been used in 2015/2016. Source: Utah Foundation.

## On-the-Ground Implementation, State and Local

The daily implementation of educational leadership takes place on both the state and local levels. The state superintendent and Utah State Office of Education are responsible for ensuring implementation of the rules and standards created by the Legislature and State Board. At the local level, this role falls to local school districts, boards, superintendents, principals, and teachers. Districts are also responsible for hiring decisions, which impact the on-the-ground players of individual school principals and staff.

### SO, WHO IS IN CHARGE?

The need to address the selection process for the State Board, in addition to examining the diversity of decision makers at the state and local level, raises the question of “who is in charge?” An issue a parent has with a teacher should be resolvable at the local level, but an issue with what is being taught or how resources are allocated might have to be addressed at the state level. To further complicate the web in Figure 1, several state and national education leaders are critical of the increasing amount of legislation passed affecting K-12 education. In the opinion of these education leaders, some of these bills overstep the purview of legislative responsibility.<sup>6</sup> Legislators are also starting to recognize this issue, and they attribute it to the growing pressure from their constituents and voters who see it as the Legislature’s responsibility to fix problems within the system.<sup>7</sup> The shift from local authority to legislative – and federal – authority to solve these problems is one impact of federal education reform in the early 2000s. The reauthorization of the Every Student Succeeds Acts in late 2015 pushes some of this authority back toward state and local officials.

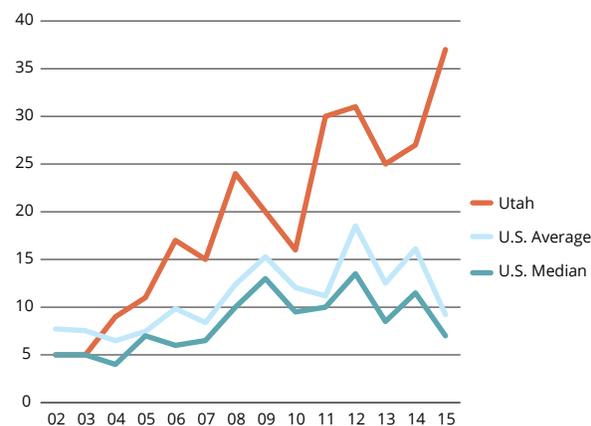
A Utah Foundation analysis of the number of bills passed affecting K-12 education by state shows Utah had the second highest number of bills in the nation in 2015. Additionally, since 2002, Utah has experienced an upward trend of education bills and continually ranks higher than the national average (see Figure 2).

Another element of the question of who is in charge relates to the current allocation of responsibilities between state and local actors. Those for more local control argue that school districts and school sites are more able to respond to individual needs and characteristics of their communities. The Organisation for Economic Co-operation and Development (an international organization) reviewed school systems of member and partner nations and found that schools with more autonomy over curriculum and assessment saw higher performance in mathematics assessments. The level of autonomy assumed by U.S. schools was just below average.<sup>8</sup>

### UTAH FOUNDATION SURVEY RESULTS

At the end of 2015, Utah Foundation conducted an online survey of school officials at the local and statewide level regarding issues of governance. Participants were invited by Utah Foundation and other education entities to take the survey. Just over 20% of respondents were involved with education at the statewide level (legislators, members of the Governor’s Commission for Excellence in Education, members of the State Board). The remaining respondents were involved at the local level, whether superintendents, local school board members, or principals. There was a possibility for crossover between the statewide and local level,

**Figure 2: Annual Number of Education-related Bills Passed in Utah and U.S., Average, 2002-2015**



Source: Utah Foundation analysis of NCSL data.

as some participants could be involved in both. While the majority of respondents live along the Wasatch Front, responses were received from 28 out of 29 Utah counties. See the Appendix at [utahfoundation.org](http://utahfoundation.org) for a copy of the survey and a summary of the results.

The first set of questions asked respondents to allocate the current share of responsibility each group has or should have over various education-related responsibilities (See Figure 3 for example). Questions focused on revenue generation, resource allocation, training and professional development, standards, and testing and assessment. Overall, there was agreement on who currently has the most influence. However, when asked who should hold responsibility for systems, no survey question evinced a desired increase in the role of the Legislature, and only one question showed a wish for an increase in the role of the State Board (income generation, an increase from 4% to 8%).

For example, the question about who controls the amount of income generated for schools and from where, respondents indicated that 63% is in the hands of the Legislature. Those same respondents indicated that only 40% should be. This shift was reflected in local districts, where respondents indicated that 17% of responsibility was housed but where 30% should be. Respondents indicated a desire for shifts in responsibility for resource allocation and for training and professional development. Respondents felt the local district and schools should have the responsibility for over 70%, while in practice they are perceived to hold around 50% of the responsibility. These responses might reflect the current critique on involvement through the legislative process, discussed above. Figures 5 through 8 detail these questions.

The second portion of the survey stated who is currently responsible for certain aspects of education authority (see Figure 4 for these defined relationships). The topics included creation of charter schools, teacher licensing, school organization, sanctioning of facilities, and curriculum. These statements were followed by “who should” questions.

Only one question saw a sizable desire for a shift from state responsibility to local responsibility. Currently, the State Board is responsible for charter schools. Respondents indicated that the State Board should be just over 50% responsible, while local districts should also play a significant role (41% of responsibility). A less sizable shift from state to local was seen in the licensing of teachers. Respondents indicated that local districts should have 10% of the responsibility, which is currently the role of the State Board.

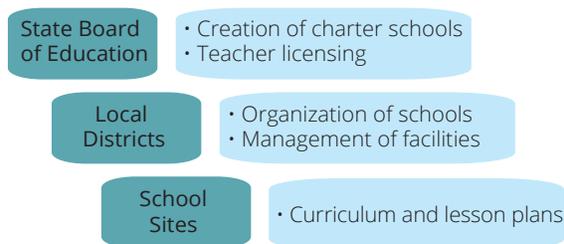
Survey responses overwhelmingly indicated that the party currently responsible should remain in control. Only one question received responses for a sizeable shift from state responsibility to local responsibility. Currently, the State Board is primarily responsible for the creation of charter schools. Respondents indicated that the State Board should share the responsibility with local districts, with a desire for a nearly 50/50 split

Figure 3: Example Survey Question

Example: Who has decision-making authority over [Responsibility A]?

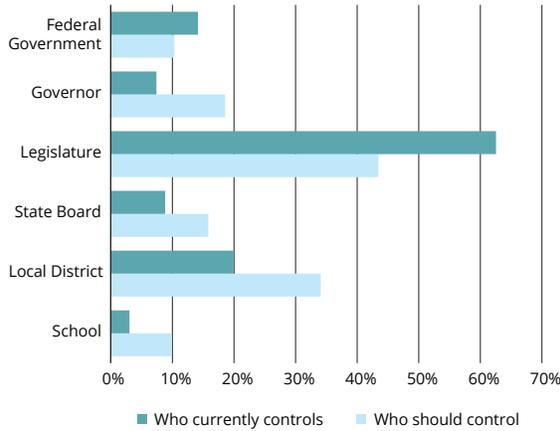
School (teacher, principal, community council)	0
Local District	30
State Board of Education (superintendent, USOE)	50
Legislature	20
Governor	0
Federal Government	0

Figure 4: Summary of Education Authority, Utah Foundation Survey Section Two



(54% to 46%, respectively). In a shift within local players, respondents indicated school sites should play a more significant role (17% of responsibility) regarding school organization. Other questions showed a desire for shifts in local governance.

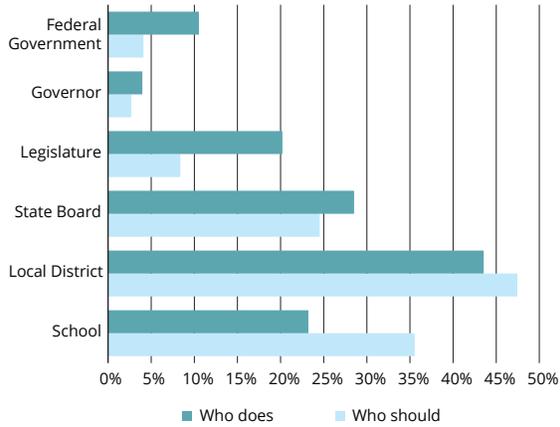
**Figure 5: Income Generation**



**Question Text:**  
In your opinion, who controls/should control the amount of income generated for schools and from where?

**Summary of Open-Ended Responses:**  
Involved parties all need to be better at working together and coordinating, in part, to ensure proper funding levels for initiatives set by the Legislature.

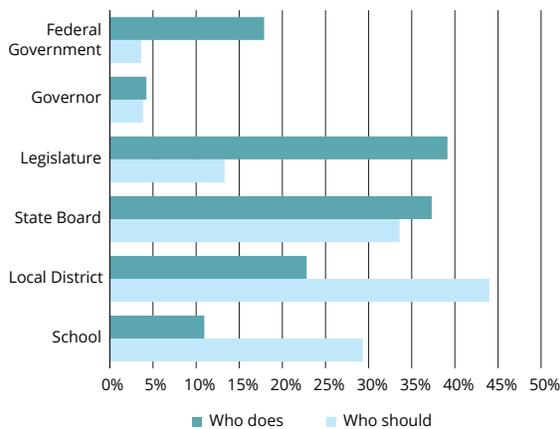
**Figure 6: Training and Professional Development**



**Question text:**  
In your opinion, who controls/should determine the “after college” training of teachers, as well as the implementation of new teacher programs?

**Summary of Open-Ended Responses:**  
The local levels need funding in order to accomplish these initiatives. Determination of teacher needs should be established at the local level and coordinated through existing State Office parameters.

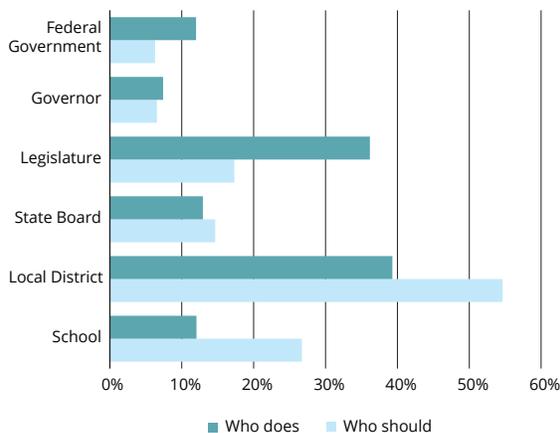
**Figure 7: Testing and Assessment**



**Question text:**  
In your opinion, who controls/should decide when students, teachers, and administrators will be evaluated, on what, and for what purpose?

**Summary of Open-Ended Responses:**  
Legislators may not be the best group to create standards for testing and assessment due to their lack of background knowledge on pedagogy. USOE may be better equipped to handle this topic.

Figure 8: Resource Allocation



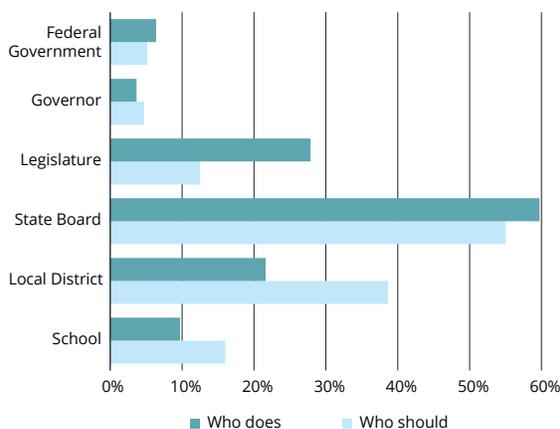
## Question Text:

In your opinion, who controls/should decide how to distribute financial and other resources?

## Summary of Open-Ended Responses:

Local and state entities handle different aspects of the many-layered system. The local side has a better understanding of what needs to take place on the ground, and the best role for state actors may be at a less detail-oriented level.

Figure 9: Standards



## Question Text:

In your opinion, who controls/should sets minimum standards and graduation requirements?

## Summary of Open-Ended Responses:

States should be in charge so employers and people outside Utah can understand what a high-school diploma equates to. However, the state should also be open to adjusting the standards as curriculum changes and develops.

## CONSIDERATIONS FOR GOVERNANCE

In the 2015 legislative session, and in preparing for the 2016 session, many legislators have proposed, debated, and drafted possible solutions to “fix” the current governance system. Some proposals only slightly alter the current system, while others require constitutional amendments to change the method of establishment of the State Board.

In an examination of California’s complicated school governance network, the Institute for Research on Education Policy and Practice (IREPP) identified five indicators to help evaluate how effectively a governance model works. These indicators, listed below with a brief description summarizing the IREPP text, provide one framework for evaluating the effectiveness of particular practices and models.<sup>9</sup>

### Openness and Transparency

Having a system in which data flows easily between groups, departments, and levels of authority, and where public participation is encouraged helps to promote successful long-term outcomes. The public should be able to understand how decisions are made and have access to debate, discussion, and support for those decisions.

### **Innovation, Flexibility, and Responsiveness**

The ability to adapt to changing context and demands, while having the qualifications and experience to be able to generate effective solutions and policies, creates space for good governance. The system should allow a variety of ideas to be generated throughout the system, perhaps being supported by general diversity in qualifications and background.

### **Stability**

Stability in the governance system provides decision-makers the space for rational and planned actions, rather than being reactionary. The stability of a system is often impacted by the revenue stream, the turnover of decision-making boards and term lengths, and consistency of policies and practices. Term lengths which rotate members on non-gubernatorial election years can lend themselves to continuity across administrations. Officials need sufficient time for “on-the-job” training, and policies and procedures should remain relatively consistent across elections cycles or appointments.

### **Accountability**

A system with clear lines of authority enables the public to know the source of decisions, holding decision-makers accountable for good or bad behavior. Accountability is generally correlated to the number of entities in a system, the overlap or separation of authority, and the method of election or appointment of decision-makers.

### **Simplicity and Efficiency**

Simple structures have minimal overlap of duties and are able to make coherent policy with minimal cost or confusion between groups. Decision-making power should be located where the knowledge is the greatest and decisions should be made in a timely manner; if decisions require multiple bodies, they should easily be coordinated across groups to minimize waste.

Lawmakers might wish to keep these indicators in mind when trying to figure out how to deal with the Judge Waddoups ruling.

## **STATE BOARD OF EDUCATION**

### **Utah's Process**

Utah has had several iterations of State Board selection. A board appointed by their peers shifted to an elected board in the 1950s. That method lasted until the current model of selecting State Board nominees was created in the early 1990s. The current system involves a nominating committee, created by the governor, to review those who wish to become nominees for the 15-member State Board. The nominating committee then presents their chosen nominees to the governor, with the governor selecting two candidates per area to be listed on the ballot in November.<sup>10</sup> This process was the result of a compromise in seeking “a stronger and more competent” State Board.<sup>11</sup>

While Utah's nominating process has been challenged in the past, Judge Waddoups' decision in the case of *England v Hatch et al.* has created the impetus for change. The case was based on the premise that the nominating committee violated the free speech of the plaintiff, via the 1st and 14th Amendments to the U.S.

Constitution. The plaintiff was an individual with a high level of education and credentials who applied and was rejected by the nominating committee.<sup>12</sup> Judge Waddoups agreed with the plaintiff that the selection process created an environment in which the State was able to pick and choose candidates, who, in theory, identify with the same priorities as the State, thus creating a lack of any specific selection criteria. Judge Waddoups placed a stay on his verdict to allow the State to find a solution, rather than establishing a new selection process in his decision.

This resulted in a flurry of legislative activity in the 2015 General Session, with five bills and two joint resolutions proposed as potential solutions.<sup>13</sup> These proposed solutions included:

- a partisan election
- a partisan election, with a reduction over time from 15 board members to nine
- appointment by the governor with confirmation by the State Senate
- partisan elections, unless voters approve an amendment to allow the governor to appoint board members with State Senate approval
- local school boards electing members to represent their district<sup>14</sup>

All of these ideas were utilized to create two compromise suggestions. One option suggested nonpartisan elections with candidates filing for candidacy and gathering signatures, along with the removal of non-voting members. The other proposed a board made of five appointed members, four members from a nonpartisan election, and four members from a partisan election based on Utah's congressional districts.<sup>15</sup> None of these proposed solutions were passed, which leaves the decision up to the 2016 Legislature.

## Other States

Utah's process of a nominating committee followed by the governor's selection of candidates for the November ballot is unique when compared to the 46 other states with state school boards. Figure 10 highlights these differences across the country. Six states elect their school board members, and only one other state, Nebraska (which has a nonpartisan state legislature), holds nonpartisan elections.<sup>16</sup> Thirty-six states have boards that are completely appointed by their governors, though approximately half of those appointments require legislative approval.

Four states have a "hybrid" election method (Louisiana, Ohio, Washington, and Nevada), in which the boards are a mix of elected and appointed officials. All elections for hybrid boards are nonpartisan, but each state has a different ratio of elected versus appointed members. Washington's State Board, for example, includes five members elected by local school boards, seven appointed by the governor, and one representing private schools. Ohio's State Board includes eleven members elected on a nonpartisan ballot and eight appointed by the governor.

### Evolution of State School Board Selection Process

**Pre-1950:** State Superintendent and School Board appointed by seven regional school board conventions

**1950:** Utahns vote that nine State Board vacancies should be filled by elections rather than appointments

**1992:** State legislation enacted creating nominating committee

**Mid-1990s:** Appointment process runs into controversy due to family members of the governor being appointed with little or no experience

**2014:** Judge Waddoups rules existing nominating committee facially unconstitutional due to violating 1st Amendment rights of applicants

*Sources: Justia, United States Courts, and Education Resources Information Center*

Of Utah's five peer states identified in previous Utah Foundation research, three have boards selected through appointments by their governors (Montana, North Dakota and South Dakota), one utilizes partisan elections (Colorado), and one has no state board (Minnesota).

Eleven states include student members on their board, five of which give the student member full voting rights.<sup>17</sup> Utah does not include a student at the State Board level. However, Utah Code does include a clause that allows local districts to have non-voting student members. In addition to

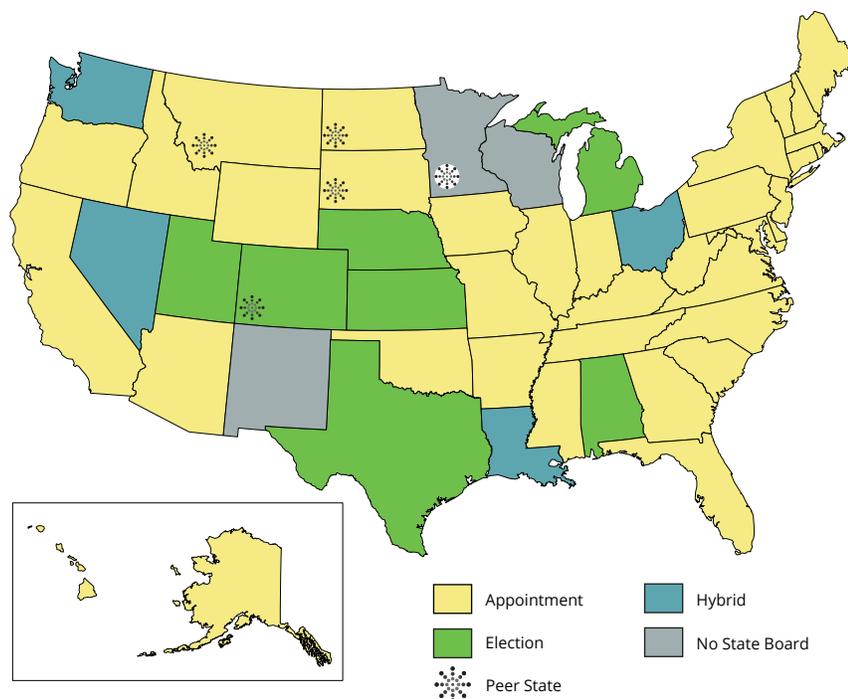
the non-voting student members, eight states include additional non-voting members.<sup>18</sup> These members range from military representatives to governors to ex-officio members. Until a change made during the 2015 legislative session, which removed all nonvoting members from the State Board, Utah had six non-voting members representing the State Board of Regents, Coalition of Minorities Advisory Committee, Utah School Boards Association, Charter School Board, and Utah College of Applied Technology.

## HOW TO MOVE FORWARD

As outlined above, the U.S. employs an array of governance frameworks and election methods. As Utah investigates the best way to change the State Board selection process, two key routes appear: an addition of clarifying criteria to ensure an objective selection and nomination process, or a complete change in the selection process for State Board members. While a combination of methods was suggested in the 2015 legislative session, the advantages and disadvantages of elections and appointments are discussed separately in this section.

The small body of existing research regarding selection method of local school boards shows no significant difference for student outcomes between appointed and elected officials.<sup>19</sup> However, several aspects of the composition, responsibilities, and attitudes of the board can impact outcomes. School boards that are representative of the populations they serve tend to produce positive outcomes for students.<sup>20</sup> Additionally, boards that engage in strategic planning, mitigate conflict, and view their superintendents as collaborators also produce positive outcomes for students.<sup>21</sup> One caveat to the existing body of research is that much of it is focused on the local school board level, so the impact on outcomes for students produced at the state level board may vary.

Figure 10: Methods of Selecting State School Board Members



Source: National Association of State School Boards of Education, recreated by Utah Foundation.

## Selection Criteria

As stated previously, the original premise of the nominating committee was to complete a preliminary screening process to enhance the quality of the State Board and ensure competency. However, Judge Waddoups' ruling showed that although the original intention might have been good, its application created a purely discretionary system that could allow both the members of the nominating committee and the governor a larger influence than intended.

One possible state response to Judge Waddoups' ruling would be to add clearly outlined selection criteria, thus meeting the original intent and removing the discretionary aspect of the existing law. Analysis of legislative attempts from the 2015 General Session cite the need for "statutory language [to be] plain and unambiguous" in order for appellate courts to find in their favor.<sup>22</sup>

## Elections

Multiple research studies have looked into the responsiveness and accountability of elected officials compared to appointed officials. These studies suggest that elected officials are more responsive to constituent issues, provide a way for the public to have a more direct input, and are more flexible.<sup>23</sup> However, State Board members who answer directly to constituents might be more concerned with reelection than getting things accomplished during their tenure. This could also lead to larger influence from special interests. An analysis of local boards (rather than state boards) showed that elected boards worked well for districts with average-to-strong student achievement, solid finances, and a high level of civic engagement in education.<sup>24</sup>

Both partisan and non-partisan elections were suggested during the 2015 General Session, however, the public prefers non-partisan elections. A Utah Policy Poll conducted in February 2015, showed that 56% of respondents preferred non-partisan elections, while 27% preferred partisan elections for state school board.<sup>25</sup> The preference for nonpartisan elections could be due to the inherent politicization of education leadership that would be a part of partisan elections. A politicized State Board could potentially see stalled rule making based on political discord or a heightened level of divisiveness from a non-partisan board.

## Appointments

Where elections lead to more fluidity in board makeup, appointments would create stability. Research indicates that stability lends itself to improved decision making connected to fiscal policy and tasks that need technical skills.<sup>26</sup> Although appointments might be a shift for K-12 state-level governance, the practice is already in place in Utah. Currently, the governor appoints the 16 voting members of the Utah State Board of Regents, who are subject to State Senate confirmation.<sup>27</sup>

The downside to an appointed State Board is it being a step removed from the public, reducing the accountability to the average Utahn. In addition, research has shown that while an appointed executive officer for education (such as the state superintendent in Utah) can impact student outcomes positively, these outcomes are not seen from appointed boards.<sup>28</sup> The suggestion provided for this change in effectiveness is that a board with more autonomy from the governor might provide "more detached, critical, and useful oversight of state education systems."<sup>29</sup>

## CONCLUSION

The current process for selecting State Board nominees has been in place for the past two decades. However, it is not the only way Utah's State Board has been selected. A brief look into the past shows both appointments and straightforward elections. Looking forward, the state has a student population that is projected to grow and continue to diversify. What type of School Board will best suit the needs of these students as well as statewide goals for education created by the governor and Legislature?

In addition to the pointed question of the selection process of the State Board, a broader question arises out of the responses to the Utah Foundation survey. Should the responsibilities in Utah's public education system stay as they are, or is now an opportune time to examine how those responsibilities are distributed? Utah voters and decision makers should work together to determine the best fit for current and future Utah public K-12 students.

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